Prisoners' Legal News

Working to Extend Democracy to All

Vol. 2, No. 1 January 1991

Prison/Community Alliance

An organization, the Prison/Community Alliance will be registering with the State of Washington as a non-profit organization in January. The people involved in this organization have several objectives in mind.

The first and most important objective is to be the contact group for the upcoming initiative to have all pre-SRA offenders resentenced by the courts in accordance to the Sentencing Reform Act. It is the goal of the initiative to eliminate the need and functioning of the Indeterminate Sentence Review Board. This initiative is still in its early stages and there may be some constitutional and/or legislative problems involved. It is planned that the initiative be filed this year but solely for the purpose of working through these problems. The actual initiative will be filed and petitions circulated in time to get the initiative on the ballots in 1992. There will be more information in the *Prisoners' Legal News* on this initiative.

It is very important for all of us 'outside' the walls' to become organized. There are many groups and organizations who are interested in prison issues. We just don't know of each other. If you are in a group somewhere in our state, or know of a group, could you please send your address to the Prison/Community Alliance? We need to know where everyone is and how to contact you. We will in turn make a list of all organizations and send each one on the list a copy of the list. Communication is a real problem, but the lack of communication can be easily resolved.

The address for the Prison/Community Alliance can also be used by prisoners who want to write to the *Prisoners' Legal News*. The P.O. Box is there if you want to use it in this way.

Keep reading the *Prisoners' Legal News* for more information, and remember, we don't need money – we need you. We are spread across the state, but together we will be heard. The changes in the prison system only take place because there is no opposition. We have been silent too long.

Prison/Community Alliance
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Kent, WA 98035

Editorial Comments

Welcome to issue #1 of the second volume of our little newsletter. With the new year you will notice that we have added a more polished look to the paper. In the past Paul and I would type up the paper and paste in graphics from our respective cells; today we have a volunteer doing the desktop publishing for us. We may go back to doing the paper by hand at any time, as our new look is little more than an experiment at this point.

When we started the *PLN* it was going to be for a four to six months trial period, just to test the waters. The experience of publishing has taught us that there is a need for a newsletter addressed to the interests of prisoners and their loved on the outside. We will continue putting the paper out for as long as that interest remains. We are presently producing 300 copies of the newsletter for U.S circulation. We plan on obtaining a bulk mail permit and with it slowly increasing the number of *PLN* readers to around 500.

We will continue being directed toward Washington state prisoners, as it is here that we are seeking to build a base from which to launch our struggle to extend democracy. But as you know, we are in a defensive mode these days. It is hard enough to just defend what we have. The U.S. president is on the verge of launching the nation into a major war without bothering with a congressional declaration of war, as required by the constitution. We who are the slaves of the state understand the importance of even bourgeois constitutional principles. We must defend them, even against those national leaders who are sworn to uphold the constitution but are in fact bent on subverting it. In other words, we will be doing much the same sort of work this year as we were doing last year.

We are starting 1991 with a budding outside support group: the Prison/Community Alliance. The group should be having its first public meeting in Seattle this month. It is made up of family members and will be focusing on such issue as getting rid of the parole board. For more information, call 859-4937 and ask for Carrie. There is much work to be done.

Here's something in the interesting observation department. Chase Riveland, Washington's corrections boss, was recorded in the minutes of the October 12, 1990, Sentencing Guidelines Commission meeting as making a point the *PLN* has been making for long time. According to the minutes, Riveland said, "that the state is currently locking up more property offenders and for

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longer terms under the SRA (Sentencing Reform Act) than ever before. The crime rate is still increasing." Also, "this incarceration spiral is not going to solve the problem." Of course he then went on to justify the increasing use of prisons. No prisoncrat is going to let the public know how big a failure their system is, or to take any step that might result in a decrease in the size of their correctional bureaucracy.

Next month we will try to have an article on the parole board's use of post-commitment information when setting minimum terms, as well as something on the notion that prisoners must be able to demonstrate that they are rehabilitated before being paroled, and must do so in the absence of any definition or guidelines as to the meaning of the term. See you then. And don't forget to keep those donations of stamps and money coming in. It is through these contributions that we measure the need for this paper.

Ed Mead

Non-Stenographic Depositions

By Paul Wright

The most crucial part or process of a civil rights suit is the discovery process. In prison suits the defendants, i.e. prison officials, have almost sole possession of the evidence that you will need to prove your claims. Many prisoners do not do much or any discovery essentially relying on what documents they have already or may be on interrogatories. Extensive and good discovery is essential to win any case. The attorney general's job is to hide and obscure the facts to protect their client, the Pro Se litigant's job is to uncover these facts and bring them to the court.

Interrogatories are useful in cases where the information needed is policy numbers, specific dates, etc., as it gives the defendant a chance to look through their records and verify the information. The drawback is it gives the defendants 30 days to go over the questions, get their answers in order, etc. Interrogatories can only be served on parties to the lawsuit.

Depositions are used to verbally question witnesses and parties in lawsuits. The advantages are obvious: the witness has to answer the questions then and there, in the event of an evasive reply you can rephrase your question and you can introduce documents as exhibits and question about those. Attorneys rely extensively on depositions.

Continued on next column

The problem prisoner litigants have faced with depositions is that due to indigence we usually cannot afford to hire a professional typist or stenographer to record and transcribe a deposition.

The Fed.R.Civ.P. (b)(4) allows the judge or magistrate to authorize non-stenographic depositions in civil cases. The Courts role should be limited to ensuring that the record produced will be an accurate one. See: Colonial Times vs Gasch, 509 F.2d 517 (DC Cir. 1975).

The means of ensuring an accurate record that I have used (and has been approved by Judges and Magistrates in the U.S. District Courts in both Seattle and Spokane) are having a prison notary swear the witness under oath, the deposition recorded by two tape recorders (one tape for the AG, one for you), labeling the tapes and breaking the plastic tabs after the deposition so the tapes aren't recorded over. Federal courts have found these means acceptable in: Jones vs. Evans, 544 F.Supp 769 (ND GA 1982); Champagne vs. Hygrade Food Products, Inc., 79 FRD 671 (ED WA 1978); Lucas vs. Curran, 62 FRD 336 (ED PA 1974); Wescott vs. Neeman, 55 FRD 257 (DC NE 1972); and Kallen vs. Nexus Corporation, 54 FRD 610 (ND Il 1972). FRD stands for Federal Rules and Decisions, few prison law libraries have this series, I had to order them from the state law library.

In the event you have been moved to another prison away from your defendants and witnesses never fear! Fed.R.Civ.P 30 (b) (7) allows the use of telephonic depositions. This means you can conduct your deposition via telephone with you at one prison, your witnesses at another. While it may sound awkward it really isn't. For prisoners moved out of state or to other prisons this is probably the only way to do depositions. See: Coyne vs. Houss, 584 F.Supp 1105 (ED NY 1984).

I've done nearly a dozen non-stenographic depositions in the last few months, most of them telephonically. Overall, I was pretty pleased with the process and the results. An obvious problem is the likelihood, or possibility that the AG may coach the witness, pass notes to the witness, etc., but there seems to be little way to get around that.

The downside to doing non-stenographic depositions is that in order to use it as evidence in court you have to transcribe it. It takes me about 8 to 10 hours to transcribe one 90 minute tape and another five hours or so to type it out. It is very tedious and tiring work. This gives you an incentive to keep your questions short and to the point and not to ramble on at length.

Non stenographic depositions are not for everyone. They take a lot of work, to prepare your questions before, and transcribe the result afterwards. A 90 minute deposition comes out to about 50 typed, double spaced pages. If you're not sure of yourself, stick to what you know. Anyone who would like more information or has any questions about doing this type of deposition should feel free to write to me.

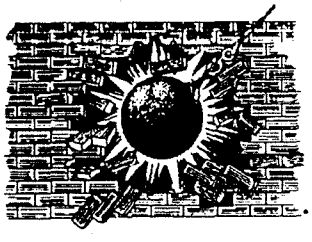
Reviews

By Paul Wright

Sentencing Guidelines Commission Meetings. The SGC meets about every month or so to review how the SRA is working, its effects on prison and jail populations in the state of Washington, what recommendations to make to the legislature, trends in prison population due to sentencing, etc. The meetings are open to the public and family members can attend. The minutes are offered free and give a run down of what is discussed at the meetings. They usually have interesting information in each issue. Write: Sentencing Guidelines Commission, 3400 Capitol Blvd., Mail Stop QE-13, Olympia, WA 98504.

Political Review is quarterly publication of the Political Review Japan Committee published in English. It is anti-imperialist in outlook and carries news on events in Japan as well as Japan's role in the outside world. It also carries articles by the JRA. It's free to prisoners and they want to exchange with similar publications. Write: PRJC, c/o Unita, 1-52 Jinbo-Cho, Kanda, Chiyoda-Ku, Tokyo, Japan.

Southern Coalition Report is a quarterly journal that focuses on prison conditions in the southern U.S. Each issue usually has a lot of coverage on the death penalty as the South is responsible for almost 90% of all executions in the U.S. The Coalition also has a variety of educational and resource material in video and print form, mainly on the death penalty. Write: SCJP, P.O. Box 120044, Nashville, TN 37212.



Prison Cells, Only $30 A Night!

Although the government spends over $30 billion per year on the prison system, some states have laws giving counties the authority to charge prisoners for the privilege of being locked up and deprived of their civil rights and liberties (not to mention their ability to work and earn money).

Several counties in the state of Michigan will soon be implementing such a program. Inmates will be charged for the room, board and medical expenses incurred during their stay in the luxurious cell provided by the state. The starting rate will be $30 per day, plus a processing fee and any additional medical costs. It may seem harsh, but prisoners will be relieved to know that Visa and MasterCard will be accepted.

From: MIM Notes

★☆★

More than 60% of all incarcerated women are African-American, Latina, or Native American.

Attention ISRB Prisoners

If you have a "technical violation" and have received an "excessive sentence" and/or have been maxed out, or if you have been taken before the ISRB for an 0.100 hearing and have had your minimum term extended, send copies of your reasons and decisions to: Ms. Patricia Arthur, Evergreen Legal Services, 101 Yesler Way, Suite 301, Seattle, WA 98104.

Ms. Arthur and her associates are trying to do away with the 0.100 hearings. Ms. Arthur needs examples of the Board's abuse of discretion with regards to sentencing on technical violations in order to convince lawmakers to make changes in the system.

Psychiatry Can't Predict Violent Behavior

In a 1982 amicus brief to the U.S. Court, the American Psychiatric Association concluded:

"...that the unreliability of psychiatric predictions of future dangerousness is by now an established fact within the profession...The large body of research in this area indicates that, even under the best conditions, psychiatric predictions of long term future dangerousness are wrong in at least two out of three cases."

In a legal brief submitted to the California Supreme Court, the American Psychiatry Association pleaded:

"Study after study has shown that this fond hope of the capability accurately to predict violence in advance is simply not fulfilled."

The A.P.A. flatly denied that mental health professionals are in some way more qualified than the general public to predict future violent behavior.

Rich Get Richer, Poor Get Poorer

In 1990, the richest 1% of the people have almost as much in after-tax income as the poorest 40%. To put it another way, 2.5 million rich people each take home 36 times as much as each 100 million poor. In 1980 it was 19 times as much.

The Center on Budget and Policy Priorities released a report on July 23rd with these figures, basing its results on data prepared by the Congressional Budget Office.

The report found that "income gaps increased substantially during the 1980s, as wealthy Americans reaped large income gains, the incomes of the middle class stagnated and poor households fell further behind."

It is not that before 1980 the U.S. distributed wealth equally. Far from it. But the Reagan and Bush administration cut taxes for the rich, raised taxes on the workers and cut social services for the poor. The number of homeless sleeping on park benches or in doorways, the hungry lining up at churches for a free meal, make it obvious that capitalism has failed the poorest portion of the population. Bush's proposed cut in the capital gains tax would once again boost the rich and squeeze the poor.

From: Workers World

Walla Walla IMU Stops Using Fire Hoses

By Clark Stuhr

Within the last few months I have noticed that WSP IMU staff no longer use the firehose to discipline outraged inmates. No my friend, instead these outraged prisoners can plan on getting a healthy lungful of what else but "Capstun!" With the large number of mentally ill prisoners in IMU the guards have used this Capstun quite a bit lately.

But wait, that's not all. Once Capstun is applied it's out to the yard you go to get a waterhose shoved into your face that is sure to leave you gagging for air. Now of course, what fun would all this be without getting thrown into a strip cell and fed sack meals for ten days. Yes, I kid you not, I have had this done to me twice and I have seen it done to other prisoners as well. To say the least, not much can be done about the use of Capstun, but I have filed a lawsuit against the use of the strip cell and sack lunches by IMU staff. I'll be sure to let *PLN* know how the suit turns out.

Florida DOC Offers Settlement

In 1988 the Florida Justice Institute filed a class action suit on behalf of PC (Protective Custody) prisoners. The suit challenges the fact that PCs aren't allowed to work, thus can't earn good time which extends their prison sentence; are locked down 23 hours a day, can't smoke, exercise, etc. The suit claims the PCs were being punished for seeking protection.

Florida offered to settle by implementing a $10 million prison plan that would have allowed the PCs to use dayroom's, work and have privileges "as close as possible to the rest of the institution." Prison officials hope that by implementing the changes immediately, they can stop the trial scheduled for December in U.S. District Court in West Palm Beach, Fla. The Florida DOC attorney claims he fears prison officials will be flooded with PC requests because the conditions will be so "attractive."

Prisoner attorneys say the plan, while an improvement, falls far short of constitutional standards and they plan to take the case to trial.

★☆★

The U.S. has the third highest incarceration rate in the world and imprisons a higher percentage of its black citizens than South America.

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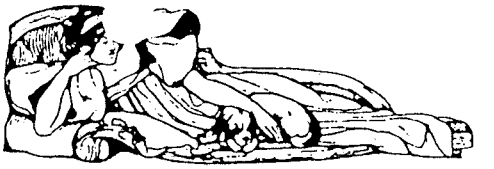
Over the years, incarceration rates relate much more closely to unemployment rates than to anything else.



Prisoner Wins Ban on Military Catalog

A prisoner filed a civil rights complaint alleging that his constitutional guarantees were violated by prison officials refusing to allow him to receive a military surplus catalog. The jury found in favor of the plaintiff on the catalog issue, awarding him $1 in damages.

On appeal the court upheld the jurys award (and $10,000 attorney fees), holding that prison officials did not examine the government surplus catalog before deciding to disallow it. Since they had not examined the catalog, the defendants could not have "reasonably assessed" whether it violated clearly established law, and therefore such officials were not entitled to qualified immunity from damages.

Officials believed that the catalog could have cutaway drawings and pictures of guns and explosives, but when introduced at trial the catalog contained nothing of that nature. Therefore the catalog ordered by the prisoner posed no threat to the security of the institution.

Other issues raised by the prisoner, including the rejection of a pornographic magazine, were decided in favor of the defendants. See Allen v. Higgins, 902 F.2d 682 (8 Cir. 1990).

Attorney General Uses Erroneous Information

A former inmate of the Reformatory filed a personal restraint petition because Earned Time credits had not been applied to his sentence once he had served two-thirds of his sentence. The petition alleged that he should be entitled to regain earned time credits that were denied previously (33 days).

During the course of this litigation, Assistant Attorney General Therese Wheaton requested numerous extensions of time in which to respond to the petition. When she finally did respond, earned early release documentation was altered to support the DOCs position.

The inmate became outraged that the Attorney General would use such tactics defending a case that clearly warranted relief. As a result, the inmate filed an official complaint with the Bar Association that alleged "Therese Wheaton used altered documents that she knew to be inaccurate to keep Mr. James past his lawful release date."

The case regarding earned time and the Attorney General complaint are currently pending a determination and updates will be reported.

Failure To Dissociate Not Infractable

A prisoner sought judicial review of a disciplinary hearing finding him guilty of advocating, creating, engaging in or promoting a disturbance.

There was indeed a disturbance, the court found, but a violation of the rule is only shown by an inmate engaging in "some affirmative action" related to the disturbance. In this case, the hearing officer found only that the prisoner failed "to dissociate himself from the disturbance." Evidence was that prisoner merely remained sitting on his bunk. This was insufficient to support a finding of violation of the rule. Murphy v. OSCI, 790 P.2d 1179 (Ore. 1990).

Federal Court Upholds Slave Labor

Can a Mississippi prisoner collect damages for a violation of his constitutional and civil rights because he was forced to work on private property without pay? The U.S. Court of Appeals says no, even in the face of a state law prohibiting inmates from doing private work.

The court held that "[c]ompelling an inmate to work without pay is not unconstitutional. The thirteenth amendment specifically allows involuntary servitude as punishment after conviction of a crime." The court said this was the case even when a prisoner is being compelled to work on private property without pay and in violation of state law. Murry v. Mississippi Department of Corrections, 911 F.2d 1167 (5 Cir. 1990).

Notice of Appeal Filed When Given To Cops

The Ninth Circuit Court of Appeals has held that a pro se prisoner's notice of appeal from the denial of a civil law suit or habeas corpus relief is considered to have been filed at the point at which he delivered it to prison authorities for forwarding to the district court. The court noted that prisoners are forced to rely on prison officials to forward their notice of appeals, and are hard pressed to prove that such officials were at fault for any delay. Indeed, the court said, "prison authorities would have greater incentive to delay the processing of Section 1983 suits, since such suits often target prison officials." Hostler v. Groves, 912 F.2d 1158 (9 Cir. 1990)

Problems That Can't Be Cured In Prison

Our society's criminal justice system is being used to treat or hide some serious social ills. Poverty, drug addiction, and alcoholism are intimately tied to the crimes for which most inmates in the federal system are serving time. Of those sentenced to federal prison in 1987, 42% were sentenced for drug related crimes. Yet resources are not available – in or out of prison – for programs that address these ills directly. The Justice Department, for example, recently reported that nine out of ten people who seek treatment in drug abuse programs are turned away for lack of space.

Who's In Prison In America?

The overwhelming answer: young black males. Why? Racial and economic biases which are integral to the U.S. prison system. At this time, one of four black men, aged 20-29 (23%) are subject to the criminal justice system. The figure is 6.2% for white males and 10.4% for Hispanic males. Nationwide, the imprisonment rate for African-Americans is nine times that of white Americans.

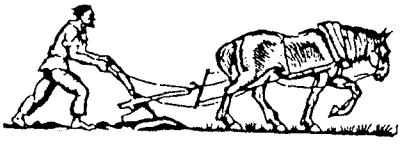
For young black men there is a clear interplay of racial and economic factors which contribute to their high rate of imprisonment. Low income defendants are twice as likely to receive prison sentences as higher income defendants. For African-Americans, whose unemployment rate is twice that of white families, economic disenfrancisement puts young black males overwhelmingly in the category of low-income defendants.

At every stage of the criminal justice system – arrest, charges, prosecution, sentencing and parole – discretion on the part of the police, judges and prosecutors profoundly influences a defendant's fate within the criminal system. African-Americans are especially vulnerable to the random nature of discretion, particularly when it is inevitably informed by race bias so integral to our society.

So it is easy to believe that three of four people incarcerated in America were earning less than $10,000 a year at the time of their arrest. Most of these poor people were young black males. It also comes as no surprise that black prisoners serve 20% longer sentences than whites for similar crimes.

If time served by black prisoners were reduced to parity with whites, the federal system would require 3,000 fewer prison cells, enough to empty six of their newest 500-bed prisons.

Friends Committee Newsletter



Four Out Of Ten Get The Slammer

A Bureau of Justice Statistics study tracked 536,000 felony offenders in 12 states in 1967. The study found that out of every 10 people arrested on felony charges, eight were prosecuted, six were convicted of the original charge or lesser offense, and four were sentenced to a jail or prison term.

Among offenders sentenced to prison in the 12 states, 27% were convicted of a violent crime, as were 14% of those sentenced to serve time on probation in the community. About one out of four persons sentenced to prison or jail had been convicted of a drug crime, as were one out of eight sentenced to probation. About 86% of all those convicted of felonies in the 12 states were male, 61% were white, and 64% were less than 30 years old.

A copy of the Bureau's bulletin, *Tracking Offenders, 1987* (NCJ-125315), may be obtained from the National Criminal Justice Reference Service, Box 6000, Rockville, MD 20850.

Money Down The Drain

A special American Bar Association committee has concluded that the millions of dollars Americans pour into hiring more police, expanding the justice system and building more jails may by money down the drain because punishment is not an effective deterrent.

What does work, the ABA found, is to teach prison inmates to read and write so that they are more likely to be able to earn an honest living.

Richard Lynch, ABA literacy program director, told a recent meeting of Washington state judges that about three-fourths of prison inmates are illiterate. Yet, less than 1 percent of prison budgets is spent on educating them.

Michael Hemovich, ABA law and literacy chairman, was blunt about the dim prospects of controlling crime by more punitive methods. "Unless we do something about illiteracy...then I think it is hopeless," he told the judges.

Official vengeance may satisfy personal urges to punish wrongdoers, but if books and bars are more effective at stopping crime than bars alone, it is stupid to deny them.

Convict Entitled To Have Officer Called As Witness At Hearing, And To Have Independent Evaluation Of Informant's Allegations

A prisoner at Sing Sing filed a federal civil rights suit challenging the constitutional sufficiency of the disciplinary hearing which found him guilty of assault on another inmate. The hearing officer had refused the prisoner's request to call the investigating officer as a witness, on the basis that he already knew the substance of this testimony because it had been presented at another inmate's hearing. The inmate also complained that the hearing officer had failed, at an earlier hearing held on the matter, to independently evaluate confidential information provided by informants.

The court noted that failure to call the investigating officer was not justified by "either institutional safety or correctional goals" and state a claim for denial of the inmate's due process right to call witnesses.

The court also held that a prison disciplinary hearing should not rely on information from a confidential informant without an independent effort to establish the reliability of the information, in order to avoid an arbitrary determination. Because the prison had not yet rebutted the prisoner's claim that no such independent evaluation was undertaken, another due process claim was stated.

The court addressed the hearing officer's qualified immunity defense, finding that he could not avail himself of this defense for failure to call the investigating officer as a witness, since the prisoner's right to do so was clearly established at the time of the hearing. Gitten v. Sulliven, 720 F.Supp. 40 (S.D.N.Y). 1989).

Tread Carefully with Sex Offenders

By Mark LaRue

I have followed Ed Meads' series on the sex offenders and I'd like to respond by offering critical support for what he has said. By that, I mean to say, I see no reason for sex offenders to be locked away in S-wing and it wouldn't bother me personally if they were free to roam the general prison population with everyone else. After all, prisoners here are going to associate with who ever they want to and they're definitely not required to associate with a sex offender from S-wing.

As you may have guessed I don't like sex offenses. And I don't believe there's any way to justify those crimes. I point this out because other crimes can be justified, i.e., sodomy, adultery, prostitution, murder in self defense and even theft. I also believe it's important to understand the difference in these crimes.

As I see it the sex offender discriminates because his victims are mostly women and children. As Ed pointed out there are a few women sex offenders as well, but their numbers are really insignificant when compared to men.

In view of the discriminatory character of their crimes, I'm not so sure SSB-6259 is such a bad idea. This does not mean of course that I support the entire bill. But I do believe it's a good idea to keep a close watch on a sex offender who is released back into the community.

Some may not like the way that sounds but I would take that position regardless of whether I was incarcerated and no matter where I was living on the outside. It's important to know who you're dealing with in order to avoid being victimized yourself. And to protect other people you love from being victimized as well. This, of course, is particularly true for people who are dealing with prisoners.

As a rule, prisoners are not the crazed killers, muggers and rapist the media leads people to believe we are. But there are those among us who have committed terrible and unforgivable crimes. And it's a mistake to overlook that when you're dealing with prisoners. Ed Mead probably knows that better than most because he had a girlfriend who was robbed and raped here at the penitentiary while trying to lend her support to the cause of prisoners rights. Needless to say, she was raped by another prisoner who had a known reputation for that type of activity.

It goes without saying that Ed and other prisoners deserve support. Ed in particular since he is a political prisoner and has always done his best to help women and men alike. Be that as it may, however, I do believe we should tread carefully with known sexual offenders regardless of whether they're inside or outside of prison. Any other course of action will only invite more sexual abuse. And none of us wants to contribute to that by overlooking the sexual offenders' crimes. In this sense, SSB-6259 will help us prevent just that by notifying the public of their offense so they can keep track of his activities.

In my view there's nothing wrong with that and I would give it my support even if I didn't support the entire bill.

Furlough Facts

By Ed Mead

Whatever you decide to do with your life you should try to do it well – be a professional. I'm a professional prisoner. I do time. I've got 15 years in and figure to retire in another 5, maybe sooner if I have some luck in the courts. Then I'll spend my time with loved ones, fixing computers and carrying signs for one cause or another.

Like all professionals, doctors, lawyers and such, it is necessary for me to stay on top of the latest literature in my chosen (?) field. The other day I was reading a journal for "Correctional Professionals" that had some interesting statistics on furloughs I'd like to share with you.

Furloughs got a bad name during the 1988 presidential campaign. Massachusetts prisoner Willie Horton was serving life without parole when he escaped from a furlough. Ten months later he terrorized a Maryland couple, raping the wife and stabbing her husband. While the Massachusetts furlough program had been started by a republican governor, Bush accused his democratic opponent, Governor Dukakis, of being "soft on crime." Thirty-second TV sound bits featuring Willie's picture made "furlough" into a dirty word.

Anyway, this journal conducted a survey during the fall of 1989 to find out what happened to furloughs in the aftermath of the presidential campaign. The upshot of it was that there were around 170,000 furloughs granted nationally in 1988, compared to 200,000 in 1987. Those hit the hardest were of course lifers. Two states, Nevada and New Hampshire, discontinued their furlough programs. Many other states tightened their qualifications of eligibility in such programs.

Let's look at some 1988 figures for neighboring states and around the country. Oregon furloughed long-term prisoners, 3,300 of them (15% were revoked). Alaska had 3,785 furloughs with a 98% success rate. And Idaho furloughed 1,268 prisoners with a 99% success rate. Florida furloughed a whopping 18,000 people with a success rate of 99.9%. Little ol' Maine furloughed 2,587 with a 99% rate of success. South Dakota furloughed 1,013 with 100% success, and New Mexico got 100% with 970 furloughs. North Dakota, Maryland, Iowa and Wisconsin also had 100% success rates.

Where does Washington state fit into the overall scheme of things? Well, we do have a furlough program albeit infrequently used. This state granted a mere 290 furloughs in 1988 with a success rate of 99.6% (one man had his furlough revoked).

How many Willie Horton types are lurking about? Not many. In those rare cases where furloughs were not successful it was almost always due to alcohol (or sometimes drug) use, late returns or not being at the location agreed upon. Seldom was another crime committed, and where it did happen it was generally a traffic or property offense. Only three states reported "assaultive behavior" by people on furlough status, and two of those (New Jersey with 3,561 furloughs and Illinois with 6,979 furloughs) reported only one incident each.

When I'm six months of my "retirement" date, have minimum custody and no detainers, my captors may

Continued on next column

take the risk of laughing me. But I won't be holding my breath waiting for them to do it. Neither should you. It's important to understand the big picture: If prisoncrats show us any compassion, mercy or similar human feelings we may not leave here bursting with rage. And if that doesn't happen then our anger isn't taken out on our wives, children, neighbors and the community. We don't come back to prison! Like one state responding to the survey said, "Furlough participants have lower recidivism rates."

A Lesson To Be Learned – From The Soviets

In Soviet prisons for women, inmate mothers give birth in the maternity ward and see their children daily in the child care center until they are two years old. Soviet officials are considering raising this age to three years old.

Since 1985 the country has seen a variety of changes in its penal practices. The results? A more than 50% decrease in the female inmate population, which continues to shrink. Three prisons have already been closed and others are being converted for use as alcohol- and drug-treatment centers.

The current sentencing trend is to have less dangerous criminals work on big construction sites in settlements where they live with their families, work in their professions, and even have a limited right to travel.

Allowing inmate mothers to retain their parental rights, and allowing inmates in general to retain a little self-respect and preserve family ties is paying off for the Soviets.

Prisons – An Expensive Stone Wall

This monolithic "solution" is becoming more and more costly to society. Yet, in spite of its expense and its dubious role in crime control and prevention, the prison response is being used with increasing frequency. In the last decade, the prison population doubled nationwide. The number of women in prison tripled, and the number of people in federal prisons almost tripled.

The cost of new prisons is staggering. In the next five years, the cost of building new federal prisons is expected to exceed $70 billion. In addition, the amounts that must be spent to maintain prisoners in confinement are also substantial. A 30 year prison sentence is equivalent to a $1 million investment in an individual. The total cost of incarceration, at the federal, state and local levels, amounted to $20 billion in 1988 alone.

A physician once testified before a California legislative committee when it was considering the construction of more prisons. He said that, as a doctor, he would be driven from the profession if he provided a single remedy for every ailment, regardless of its complexity or symptoms. He urged the committee to consider that there should be more than one response to crime.

Alternative punishments are usually much less expensive than prison sentences, but even so, they are very vulnerable to federal and state budget cuts. For example, in the early '80s, when the Bureau of Prisons underwent budget cuts, it closed all of its halfway houses and asked for more prisons.

'Friends' Newsletter

The Price of Resistance – Is It Worth It?

By John Perotti

A comrade and brother, Ed Mead, recently wrote his opinion and analysis of the definition of POW and the continuing controversy of "Freedom Now." In it he raised the issue of how political prisoners traditionally do their time – either: a.) quietly doing it with the objective of early release; or b.) doing it by raising political consciousness in your fellow prisoners and building a revolutionary resistance movement.

While I can not and do not claim to have the background of dedication Ed does, I have to agree with his choice by building a revolutionary resistance movement. What wasn't elaborated on was the fact that the most vocal, violent and/or effective of us must expect to pay the price of our beliefs. When I finally became politically conscious no one informed me of the consequences. I write this to those who are in this stage of transition, not to detract from the transition, but to let your know the facts, so you are prepared.

Depending on what type of person you are, you have a hard road to travel. But if you have truly achieved political consciousness you will know that the harder the road, the more effective you are – and what doesn't kill you, only makes you stronger.

You should look forward to your mail censorship, character assassination, isolation and strip cells, beatings, maceings and if your gulag has it, fire housings. If you're dedicated and pick up the sword as well as the pen, look for added sentences on your present one. Also look for setups and assassination attempts by prisoncrats and other prison collaborators. This is not a game, human lives are at stake. Never go into this thinking it is a game, always be serious in what you say and do. Always keep your guard up and only surround yourself by loyal comrades and brothers. When you fight the Beast, the Beast will use any ways and means to squash you. I know, I've experienced all of the above, and will probably experience much more.

If I could turn the hands of time back, I'd make the same decision today I made then. I'd make it because I can live with my conscience. I can savor the smiles and laughter of the children, who will inhabit the planet, the smile of the brother who thought he was a mere criminal, until a whole new realm of thought and perspective opened up to him. The victory cheers of comrades who have seen with their own eyes the power of unity in the cold face of oppression. Comrades who will never come back to the gulag once released, and who will treat their fellow human beings with dignity and respect. Even the looks in some guards eyes when they realize they've been used as pawns in a chess game.

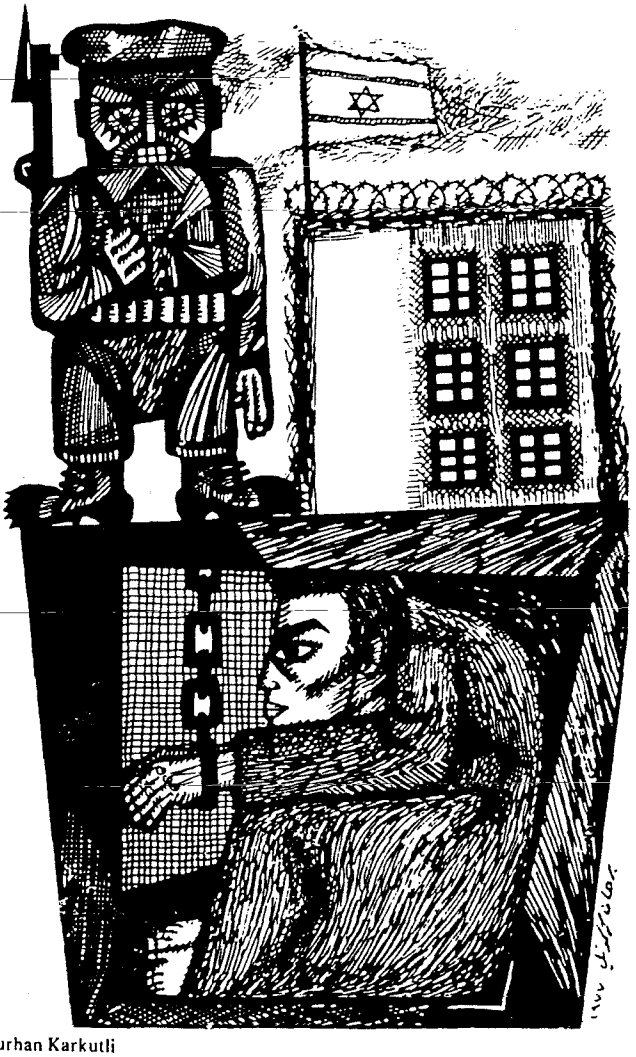
Yes, it's worth it, how could it be not.

Book Request System Inadequate

Many jurisdictions try to meet their constitutional obligation to provide segregated prisoners with adequate access to the courts through some sort of law book request system. This means the locked-down prisoner must send a written request to the prison law library asking for specific volumes of legal reference material. This restrictive practice has been struck down in yet another case, this one filed by protective custody prisoners in a New York prison.

A U.S. District Court judge outlawed the so-called kite system of doing legal research, saying "that the present book request system at Clinton PC does not provide plaintiffs with meaningful, adequate access to the courts."

The court went on to note that the said prisoners "are not able to browse through materials in order to compare legal theories and formulate ideas. This is a constitutionally impermissible situation and it is exacerbated by several factors. PC inmates experience delays in receiving books. They also, on occasion, receive books other than the ones they requested. Finally, their requests that citations by Shepardized are often completed improperly." While this case was decided on the basis of PC prisoners, the same reasoning has been held to be true for convicts being held on segregation status. Griffin v. Coughlin, 743 F.Suppl 1006 (NDNY 1990).



Burhan Karkutli

– Letters From Readers –

Letters from our readers are encouraged. Names of writers will not be published unless specific authorization is given to do so. We welcome the input of every reader. Here are some letters recentlysent to *PLN*:

Foreign Letter

I see the continuing of *PLN*, the paper is fairly legible. It seems, the malignity of the rulers in Walla Walla and Monroe with their quest to delay, restrict or even destroy the *PLN* are banned. In any case there are some news lately which are of interests.

Comrade Gerry Hanratty has been moved to the maximum prison Düsseldorf, Gerry McGeough was moved the the Wuppertal shelter, thay are awaiting their court trial in front of our fascist Oberlandegericht Düsseldorf. (An anti-terrorism court) full of symbolic-racism, neither objective nor fair. The media had much of an subordination since the Comrades arrested. This would be an unjustifiable step to circulate reasons for suspicion.

The first day of negotiation is August the 16th. Anyway, there is an solid trial-information papaer every two weeks, responsibility has the group – "Comhphobal Cumhact" (address in *PLN* #4) and some other supporters.

Furthermore, Pauline Drumm (Irish) who is imprisoned together with the two AD members (Action-Directe) in Fleury-Mérogis Felale gulag, had to share a cell with an Aids-HIV woman, just to keep her quiet and cool. Especially her political beliefs and activities. Death punishment by the so-called french-government. Legal murdered outlined by the leading judges and their rulers. They are surely aware of the fact that only a small blackout would murdering Pauline during her following years of prison and torture.

The "Durchblick newsletter" has interests in some details on foreign gulags, make sure to give the Comrades there an overview on the prisons you are in! The address is:

Durchblick – Knastschrift
c/o Gneisenaustr. 2
1000 Berline 61. W-Germany

Also fascist riots against our Comrades in the Pro British KZ Crumlin RD (the prison is remand for Irish in the six counties – Northern Ireland). The screws and Loyalist gangs are on the loose, they are beating, torturing the Republican POWs for no reasons, the battle for segregation continues and a whole floor was put on solitary-confinement some weeks ago, the POWs denied their daily slop-out which returned heavy punishment.

The thoughts are, we need more framework, its the biggest quest for higher political developments! Regional struggle is needful, I hope we are able to perform our struggle as an change-of-the-system and gain widespread support.

Rosa Luxembourg said once: "the movement itself, without its connection to the final goal, the movement as an end in itself, is nothing to us. The final goal is everything to us."

Slan and revolutionary power.

Alex, Germany

Rejection Process

Last Thursday I got a rejection slip in the mail for *PLN* #7! The reasons listed were: 1) the mail contains threats of physical harm against any person or threat of criminal activity – then in quotes "chewing policemans hand off", 5) The mail concerns plans for activities in violation of institutional rules – "solicits contributions of stamps," and 14) the mail contains information that threatens the security and order of facilities – "drawing of pig and pig batons."

I grieved it on the grounds that it is a non-profit organization and it's simply our choice to consume or not to consume and that not less than a week ago you let me receive #6. Much inconsistency with your policy and I guess I can understand why you would feel threatened. By denying me my rights you're admitting guilt.

I am going to tell them so, tell them I sent my copy of their rejection slip to my mom, she also receives the *PLN* and when she looks at your reasons and reads #7 you will have formed her opinion for her. Thank you.

Anyway, I liked "Prisoners can't be punished for refusing to perform unconstitutional assignments," "It costs too much and does not work" and "Walls gets Special Needs Unit." I like them all, but I suppose I like the ones that directly benefit or affect us as prisoners immediately!

D.H., Shelton, WA

Breeder Reactors?

Latest *PLN* just arrived – excellent issue – you should know that your piece on prison cost was even more correct than you let on. That prisons are, in effect, breeder reactors where young men come in and, by treatment, are turned into something much like plutonium. Since there is not real effort made on rehabilitation, more people who enter jail as grown men or women are trained and educated by pros to become further pros themselves when they get out. Once out, they can train the young and recruit them into criminal activity.

What with inflation and the upcoming economic collapse, there will be even more young people with no way of earning a living – along with a taxpaying population who will not want to pay $40,000 (which will increase with inflation) to house a junkie or mugger – did you say it would be cheaper to send prisoners to Harvard?

It seems obvious to me that changes in prison policy will have to be made quickly before the jails go bankrupt. If prisons try to compete economically with the outside world using cheap prisoner labor, they will only end up displacing "free" labor (as the term went back in the 1850s.)

Sounds almost Marxism – a dialectic – large classes of 'offenders' will have to either be let out or will find many offenses suddenly of a non-criminal nature. George will lose his war on drugs – unless he can get the Japs to pay for it, like he wants them to pay for our "war" with Iraq.

Of course, what is needed is intelligence, but this sort of it seems to be lacking – but then real genius does not seek to spend its life in the B.O.P – so they will bop till they drop.

Dick Treeman

Prisoners' Legal News

Working to Extend Democracy to All

Vol. 2, No. 2 February 1991

No Blood For Oil

By Paul Wright

As we go to press with this issue of *PLN* the United States is preparing to attack Iraq in the Persian Gulf. There's a large number of veterans from past imperialist adventures still in prison throughout the United States today. *PLN* does not support the Iraqui invasion of Kuwait nor the regime of Saddam Hussein. By the same token, we also vigorously oppose American interference in the Middle East and do not believe that restoring a feudal monarchy and maintaining Exxon's level of profits is worth the life of one American soldier (already some 90 have died without a shot being fired) to say nothing of the carnage and destruction that will be wreaked upon the Arab population of the region. George Bush's hypocrisy in this whole sordid adventure is readily apparent; Israel occupies the nation of Palestine and territory that is part of Egypt, Syria, Lebanon and Jordan, this has been repeatedly condemned by the United Nations, the U.S. hasn't sent troops but they have sent money and weapons: to the Israelis. We hear Bush talk about sanctions not working thus making a need for the use of military force, yet we don't hear Bush calling for the invasion of South Africa after years of sanctions have failed to dismantle apartheid. But the South African regime, like Iraq before August 2, 1990, is not a threat to American interests.

The January 3rd, 1991, edition of the *"Seattle Times"* reports that the military is prepared to reinstitute the draft to fill up the ranks of the military with more cannon fodder in the event of massive casualties in the middle east. The U.S. has never fought a major military conflict without resorting to a draft. Those who do the fighting in these campaigns are working class youth. The best example of this is Vice President Dan Quayle, he used his family connections to wangle a position with the Indiana National Guard when American youth were fighting and dying in rice paddies in South East Asia.

In the event of a draft young men (women are exempted) will have to make a choice to resist or to be drafted and go fight for corporate interests. It seems like an easy choice: a jail cell beats the hell out of dying in a desert 8,000 miles from home just so the United States can control the oil supplies of it's economic competitors in Europe and Japan. We will provide complimentary subscriptions of *"PLN"* to all jailed conscientious objectors and draft resisters on request and urge others to support those with the courage to resist this military adventure.

We would also like to encourage our readers, especially those who are veterans, to write to the soldiers in the Middle East and share your thoughts on the matter with them. If you don't know anyone in particular you can write to:

Any Service Member
Operation Desert Shield
FPO, New York, NY 09866-0066

If you would like more information about veterans who are opposed to military intervention and who support GI resistance write to: Viet Nam Veterans Against the War Anti-Imperialist, 4710 University Way N.E., #1612, Seattle, WA 98105, (206) 292-1624.

The Parole Board Audit Report

The Legislative Budge Committee (LBC) has issued it's preliminary report on the Indeterminate Sentence Review Board (ISRB). The December 14, 1990, report was an audit that examined the operations of the Board in the context of the dual sentencing system that now exists in the state of Washington. The audit, rumored to have been initiated by victim rights groups, focused on how well the Board accomplishes its goal of protecting the public.

The passage of the Sentencing Reform Act (SRA) of 1981 created a dual sentencing system in this state. One system is indeterminate and is based upon the rehabilitative ideal. The newer system is determinate and is based primarily on the principle of punishment. RCW 9.95.100 establishes rehabilitation as the criterion for release of pre-SRA prisoners, whereas under the SRA sentence lengths are maximums and there is no end-of-term review regarding a prisoner's rehabilitation. The conflict between these two sentencing systems has resulted in a situation in which two prisoners serving time in the same prison for identical offenses, and both having access to the exact same programs, only one is pre-SRA and is being rehabilitated while the other is post-SRA and is being punished. The one being rehabilitated cannot be released until the Board certifies that the process is complete, an additional hoop that generally results in significantly longer terms for pre-SRA offenders.

There are some 1,900 pre-SRA prisoners currently

Continued on page 2

The PB Audit Report *continued from page 1*

serving time in Washington's prison system, out of a statewide prison population of approximately 7,500, and there are about 2,000 pre-SRA parolees still under the jurisdiction of the Board. A conservative estimate, according to the LBC Report, is that in 1998 there will be 1,400 pre-SRA offenders behind bars, just 500 less than the current population.

When the SRA was initially passed into law it contained a provision that would have abolished the Board, but subsequent amendments to the law (RCW 9.95.009) have extended the Board's life until 1998. The legislature's objective was to phase out the Board, its membership to be reduced commensurate with the agency's remaining work load. What has happened instead is the development of a situation in which the more pre-SRA offenders that are kept begin bars, the longer Board members and their retainers will have their jobs. It has thus come to pass that the Office of Financial Management's (OFM) forecast of the size of the indeterminate population in fiscal year 1989, for example, was 55 percent above the OFM's forecast, and in fiscal year 1990 the actual indeterminate population was 68 percent above the forecast. Rather than phase itself out, as intended by lawmakers, the Board has actually added another member and their request for yet another is in the process of being approved.

According to the LBC Report, if all sentences were made determinate, as originally intended by the state legislature, not only would we have a single and more fair sentencing system, but a lot of money would be saved as well. The Report states that "the legislature could consider once again whether to eliminate the ISRB entirely..." The findings of the LBC include a statement about the money that would be saved by eliminating the Board: "If the ISRB and parole function within the Department of Corrections were to be eliminated entirely, the state would save approximately $3 million in the first year." The report goes on to say that the above figure "does not include the savings that would accrue from releasing from prison those people who have served terms beyond the [SRA] presumptive range. If this number is only 500 prisoners, the savings could be as high as $11 million per year." The LBC's $11 million savings figure calculates the annual cost per prisoner at only $21,000, significantly less than the actual yearly expense, and does not include amortized capital costs or other hidden expenditures.

In addition to the fundamental unfairness of having two disparate sentencing systems and the extra expense in maintaining a bloated parole bureaucracy, the LBC Report expressed some concern over the Board's problems with it's risk assessment mechanism. Specifically, "the possibility, even the certainty, of making 'false positive' findings." The two part question posed by the LBC was (a) whether the Board's assessment of an individual's risk to reoffend adequately protects that person's liberty interests, and (b) whether the Board's exercise of its discretion provides a greater measure of public safety protection than currently exists under the SRA. The LBC's answer was high qualified but negative in both respects.

"In the course of our review," the LBC Report found, "we have identified several problem areas and concerns which lead us to question whether the board presently has the ability to make consistently well-informed, timely and appropriate decisions" (Report, p. 11). "In our review of case studies and through out participation at board hearings," the Report continues, "we observed several instances of prisoners deemed not parolable for the reason that they had not yet participated in a class or program that might benefit them. Of course participation in any such (often not available) programs will not necessarily result in a favorable decision concerning parolability, and, needless to say, SRA offenders are not confronted with this dilemma.

The LBC's audit of the parole board concludes with a series of recommendations, including a comprehensive review of the sentencing system to be completed in 1991. The Report asks that the review process "[e]valute alternatives and make recommendations concerning the scope of board authority to make policy changes that affect, how, when and why release decisions are made" for pre-SRA offenders. Yet they do not go on to call for the repeal of RCW 9.95.100 (the statute at the core of this sentencing contradiction) or the outright abolishment of the Board. Instead, the LBC makes vague and essentially meaningless requests for developing a staffing plan for the parole board, and for additional reviews of areas like program availability, the adequacy of maximum terms, etc. Just too little, too late.

The outlook for the future continues to look bleak for pre-SRA offenders. In February of 1990, state law makers passed what they call the Community Protection Act, a draconian piece of legislation that is resulting in paroles being revoked due to technical violations and prisoners having their pre-SRA terms extended. The new law mandates that "the indeterminate sentence review board shall give public safety considerations the highest priority when making all

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If you have not made a donation of stamps or money to PLN, please do so now. Send such contributions to Prisoners' Legal News, P.O. Box 1684, Lake Worth, Florida 33460. Mail your submissions of articles, artwork, etc. to either:

Paul Wright #930783
Box 5000, HC-63
Clallam Bay, WA 98326

Ed Mead #251397
P.O. Box 777
Monroe, WA 98272

(If you are located in Europe or the Middle East send financial contributions to Oxford ABC, Box ZZ, 34 Cowley Rd., Oxford, England. Readers in Latin America, Australia and New Zealand should send their PLN donations to Toronto ABC, P.O. Box 6326, Sta. A, Toronto, Ont., Canada M5W 1P7.)

The PB Audit Report *continued from page 2*

discretionary decisions on the remaining indeterminate population..." Every gang of thugs calling themselves a government, from Robespierre to Hitler, invoke the hallowed name of "public safety" to mask the various forms of their injustice. Pre-SRA offenders can expect to be hearing the term more and more in the coming years unless active steps are taken to resist this growing tide of repression.

These steps might include work aimed at getting some of the citizens of this state involved in the process of trying to abolish the Board. There is a measure of support for such undertaking. The **ISRB Transfer Study Committee, Report to the Legislature**, submitted to lawmakers in January 1989, looked at alternatives to the existing dual sentencing scheme. One of the Committee's proposals was called the "determinate model," a plan that would have transferred all terms of confinement considerations over to the Superior Court. Under this model the remaining 350 first degree murder offenders would have their sentences converted to SRA sentences, and all other pre-SRA offenders would have had their minimum terms converted to maximum terms (i.e., your SRA minimum is your maximum). This determinate model was judged to be by far the least expensive alternative. In addition to the cost savings, under the determinate model all release decisions made by judges would have been covered by judicial immunity, thus protecting the state from tort liability in the event of mistakes. The implementation of this model would have resulted in the prompt termination of the parole board. But the legislature refused to bite the bullet. The question is whether political realities are adequate for us to help them do so now, and we can't know that until we try.

The newly formed *Prison/Community Alliance* (PCA and the editors of the *Prisoners' Legal News* are in the process of drafting sample legislation that will abolish the Board and turn its function over to the courts. We hope to launch a citizen's initiative campaign to get the proposed law on the statewide ballot in 1992. Soon we will have sample copies of the bill to share with you, for your comments and input. Of course, it will take a lot of building to transform the PCA into a vehicle capable of performing at the levels required to get this bill on the ballot. The participation of family members is essential if this project is to succeed. Have your loved ones call Carrie at (206) 859-4937 for more information about the PCA (phone evenings or weekends, no collect calls, please). Or write to *Prison/Community Alliance*, P.O. Box 276, Kent, WA 98035, with offers of help. The *PLN* also needs your ongoing financial support so we can continue to keep you informed and in touch with each other.

If we do work toward these goals it is likely that we can expect more official studies like the LBC Report and outrages by the board that can only make our task an increasingly easier one.

Ed Mead

Response To "Tread Carefully"

By Paul Wright

In Issue #1, Vol. 2, of *PLN* we had an article by Mark LaRue titled "Tread Carefully With Sex Offenders." In it Mark discusses, among other things, SSB-6259. This bill in the state senate, which passed and has since become law, among other things, called for sex offenders to register with police. Mark supported that part of the bill stating it would protect citizens from being victimized and better help the surveillance of convicted sex offenders.

I think that Mark is wrong in supporting any type of registration of ex-prisoners, sex offenders or not. Mark starts with the assumption that this registration will only apply to sex offenders. Time and time again we have seen laws passed which only dealt with sex offenders and it turned out that when there was no opposition to it they turned around and broadened it to affect all prisoners. Examples of this was when the parole board started requiring polygraph (lie detector) tests for sex offenders on parole, no one complained and within a year everyone on parole had to submit to polygraphs if it was a condition to parole. More recently the state legislature ruled that sex offenders convicted under the SRA would only receive 15% good time off their sentences rather than the 33% all SRA prisoners had been receiving. That turned out to be such a good idea that as of July 1, 1990, anyone convicted of a "violent" offense only gets 15% of their sentence cut for good behavior.

I think it's only a matter of time before all released prisoners have to register with the police upon release, some states such as Florida already have laws like this. I disagree with Mark that this type of registration law will help protect the community. The news media has already reported that most released sex offenders aren't registering, then the police lack the resources to track down the non-registrants (several non-registrants have been charged in various county superior courts and a constitutional challenge is pending on the matter.) I don't see that registering sex offenders, or any other type of ex-prisoner, will make anyone safer. The registration information is kept by the police and might only be useful after a crime has been committed (assuming the perpetrator registered). Common sense dictates that a responsible parent won't let children play unsupervised, leave their kids with strangers, etc., greater awareness in protecting themselves is what citizens need, not registration laws that open up the prospects of police state surveillance.

After a lot of media hype and publicity about sex crimes (the fad "crime of the year") the legislature felt they had "to do something" to pacify voters. Of course not one will step forward to oppose these repressive measures because it's "only for sex offenders." Sure, that's today, wait until the next bill passes that expands it for everyone. I am wondering if a law passed that requires all released prisoners to register with police if Mark will be going down to the police station to register.

[The following article about Mothers in Prison was excepted from the "Pacific" section of the December 2, 1990, issue of the Seattle Times/P-I, and then edited further to meet the informational needs of Prisoners' Legal News readers.]

Mothers In Prison

Lori and Raynette are both inmates at the Washington Prison for Women near Purdy, and each of them, like many of their peers, have given birth while behind bars. The experience is much the same for all of Purdy's inmate mothers. They are taken to St. Joseph's Hospital in Tacoma where the delivery takes place, then within two or three days the infant is taken away and the mother is sent back to prison. Lori and Raynette describe the parting as the single most painful event of their lives and the source of their deepest anguish.

"The second I handed her over, I didn't want to live again," Raynette says. "I just wanted to get up and run. I wanted to scream, 'No! No! No!' But I couldn't say anything, couldn't do anything. I almost blacked out."

Such separations are endured with increasing frequency at Purdy, where three-quarters of the prison population are mothers, and where there are between 10 and 15 pregnant inmates at any one time (out of an inmate population of approximately 280).

As the number of women prisoners nationwide has soared from 12,000 to 40,000 in the past decade (a result of more women in poverty, tougher drug laws and a complex maze of other social developments), there is a concomitant need to examine conditions being faced by incarcerated mothers, including policies regarding inmate mothers and their children. Some women leaders on the outside argue that separating a mother from her newborn child is cruel and only helps perpetuate a cycle of instability that can lead the child to prison or worse years later.

"There has to be a stronger word than cruel. It's beyond cruel," says Sister Elaine Roulet, who runs the nation's oldest live-in nursery for children of women prisoners. The program in New York's Bedford Hills prison allows newborn children to stay with their mothers for up to 18 months. Roulet is working to increase it to two years. The purpose of the program is to encourage the all-important bonding between mother and child and to prepare for a smooth transition to the outside world.

As reported in the last issue of the *PLN*, inmate mothers in Soviet prisons give birth in the maternity ward and see their children daily in the child care center until the infant is two years old. Prison officials in the U.S.S.R. are now considering raising this age to three years old. Why shouldn't American mothers in prison be entitled to at least as much access to their children?

"You can't measure how important those first years are – both to the mother and to the child," Rouset says. Caring for their children helps to build mothers self-esteem and motivates them to stay out of trouble. The child, in turn, learns to trust and feel secure, a foundation upon which all character development is built. "If the child has a bad first year, she'll have a bad second year, she'll have a bad third year and so on..."

Nine other states, including New Jersey, Minnesota and California, have started up their own nursery programs in recent years. The warden at Purdy, Eldon Vail, says he'd do the same thing if he had the money. Yet there is always enough money to increase the levels of security and repression against these women. It is, we submit, simply a matter of priorities.

Texas Woman Wins $125,000 Settlement

A woman won a $125,000 settlement from the Texas Board of Pardons and Paroles that may set a precedent for more civil suits involving parole decisions. The woman was raped by a man who had been sentenced in 1977 to 123 years in prison for attacking 21 women. He was paroled in 1986 after serving eight years.

Station Files Suit To Televise Execution

A San Francisco public television station, KQED, has filed a suit against the governor for permission to broadcast executions. Currently, cameras are barred and witnesses are not permitted to take notes. A DOC representative said the rules exists because executions are not intended to be public spectacles. At last report the suit is still pending.

Spending On Corrections Rises Sharply

Federal, state and local governments in the United States spent $61 billion in fiscal year 1988 for civil and criminal justice, an increase of 34 percent since 1985, according to a report recently issued by the U.S. Department of Justice's Bureau of Justice Statistics. The report includes these figures related to corrections:

- Three cents of every government dollar spent in 1988 was for justice activities; a penny went for corrections.
- Since 1979, state government spending for building prisons increased 593 percent, that's 2.6 times faster than spending to operate correctional institutions.
- State governments spent 3.5 percent of their dollars for corrections. That percentage includes building and operating prisons and running probation and parole programs.
- In October 1988, the nation's civil and criminal justice system employed 1.6 million people, with a payroll for the month of $3.7 billion.

Single copies of the report, "Justice Expenditure and Employment, 1988," may be obtained from the National Criminal Justice Reference Service, Box 6000, Rockville, MD 20850.

Reprinted from Corrections Today

Nutraloaf And The Law In The Northwest

By Wasseneh Taddesse

Nutraloaf is a dog-food type substance fed to prisoners on segregation status, generally to those who have committed some additional infraction while on that status. As with all repressive measures, the practice has been abused by those who hold power over others. A struggle has resulted that is just now getting the attention of the federal courts. Here we will review of few of the recent rulings handed down on the feeding of nutraloaf to segregation prisoners.

The first and one of the better decisions on the nutraloaf issue is *LeMaire v. Maass*, 745 F.Supp. 623 (D. Ore. 1990), in which the court held that both the Eighth Amendment's prohibition against cruel and unusual punishment and the Fourteenth Amendment's due process clause were violated when guards at the Oregon State Penitentiary placed inmates on controlled feeding status (nutraloaf) for conduct not directly related to the misuse of food or utensils. Nutraloaf, which is made from blending, freezing and later baking foods used in meals, is designed to be eaten without utensils (it is served in a block). The court upheld the use of "controlled feeding," at least by implication, in cases where segregation prisoners throw human waste on guards or misuse food or utensils.

The second and by far the least favorable decision was that in *Adams v. Kincheloe*, 743 F.Suppl. 1399 (E.D.WA 1990), [Ed. note: the *Adams* case was decided on a summary judgment motion where the prisoner plaintiff did not respond at all nor present any evidence to rebut or contradict the states motion.] wherein the court held that the feeding of nutraloaf under the facts in that case did not constitute cruel or unusual punishment or violate due process of law. The court even upheld the manner in which the nutraloaf was served to the prisoner (guards tossing the lump of stuff through the tray slot in the door and onto the floor of the cell).

The last ruling is an unpublished opinion by the Ninth Circuit Court of Appeals. It is *Gilcrist v. Washington Corrections Center*, CA Case No. 88-3869, in which the court held that a provision of Washington state's administrative code, WAC 137-28-110, which says that "[l]owering the quantity of the quality of food...shall not be used as a sanction," may give rise to a liberty interest cognizable under the due process clause. It was held, inter alia, that the use of food (nutraloaf) as a form of punishment states a claim upon which relief can be granted. Unfortunately, court rules prohibit anyone from citing unpublished decisions as precendential authority. This renders the holding in *Gilcrist* useless to those challenging the use of nutraloaf.

While the struggle around the state's feeding of nutraloaf is a continuing one, there are enough rulings around the issue to see where the dust is most likely to settle. One can reasonably assume that nutraloaf cannot be fed to segregation prisoners unless such prisoner has at least been accused of misusing food or utensils or throwing substances onto guards. Once the nutraloaf is being fed to a prisoners, it is reasonable to argue, it must be served in a reasonable manner (not merely tossed on the floor of his cell). While this may sound like a basic minimum, there is much fight remaining even to secure this small gain.

New York Report Matches National Study Results

A study released in October of 1990 found that nearly one out of every four young black men in New York state is under the control of the criminal justice system on any given day. The results of the joint study by the Correctional Association of New York and the state Coalition for Criminal Justice were similar to the findings of a national study done last winter by The Sentencing Project.

The New York study found that 23 percent of the state's 193,000 black men between the ages of 20 and 29 are in state or local prisons or on probation or parole.

Florida DOC Officials Harass Women

A recent investigation by Florida DOC investigator Clayton Lambert of complaints of sexual harassment made by several female employees against Martin Correctional Institution (MCI) warden David Farcas and Southeast Florida DOC director William Rouse.

The six women claimed that Rouse and Farcas made sexual comments to female employees, french kissed them and stuck their tongues in their ears.

Farcas received a written reprimand from Rouse, who is his supervisor. Rouse, in turn, received a oral reprimand from his superiors in Tallahassee.

Some Peruvian Prisoners Released

Prisons in Peru are so overcrowded and underfinanced that two prisoners a day are dying at Lurigancho prison (where 5,900 are housed). As a result of these conditions, prisoners went on a hunger strike for better conditions. The result of this strike was a "depenalization" decree by which some 20-25 prisoners a day are being released, this includes mainly prisoners who have not yet been convicted of anything.

This does not affect the many political prisoners or those accused of "subversion," most of whom are held at Cantogrande prison.

In 1986 the Peruvian government, using helicopter gunships and Marines, murdered hundreds of political prisoners and prisoners of war (most of whom were members of the Peruvian Communist Party, also known as Sendero Lumioso or "The Shining Path"), under guise of quelling a prison revolt. Now, outside observers are no longer allowed to inspect the political prisoners living facilities nor to visit them.

From The Editor

By Paul Wright

Welcome to the tenth issue of *PLN*. As our readers may recall issues #6, 7 and 8 of Vol. 1 of *PLN* had been censored by prisoncrats at the Washington Corrections Center in Shelton, WA. The excuse they had given for this censorship was that the article about the dog running wild in #7 and the drawing of the pig were a "threat to security" and that *PLN's* solicitation of stamps to help cover our expenses was "in violation of institutional rules." This was appealed to the Director of Prisons, Larry Kincheloe and he overruled the decisions by his minions at Shelton and those issues of *PLN* have been delivered. So hopefully that issue of censorship has been resolved.

PLN is still banned in Texas by the Texas Department of Corrections. The attorney representing the class of prisoners in the *Guajardo* class action is currently investigating the matter and so far the Texas attorney general has not responded to his letters. The TDC has a long history of censoring prisoner rights publications and has lost the issue several times in court, but apparently they keep trying to get away with it. We will keep our readers posted of our continuing struggle against censorship. By the way, for our prisoner readers information, in the event that any issues of *PLN* addressed to you are censored or denied to you by your captors we encourage and support all efforts made on your part to receive *PLN*. Our publisher will administratively appeal all rejections as soon as notice is received and you are encouraged to do the same. We have a sample suit drafted to assist you in litigating the matter in the event that administrative appeals are ineffective. We also have a listing of federal cases that deal with censorship by prison officials. Just write to either Ed or myself directly or in care of our publisher and we will send you the information you need.

PLN is anti-copyright. Readers are free to copy and reproduce *PLN* to their hearts content. If you quote us in a publication please give us credit as the source. We want to expand our readership and our circulation, so if you like *PLN* share us with your family and friends, don't keep it a secret! If you know of any bookstores that might be interested in carrying *PLN* we can make bulk issues of *PLN* available to them for sale/distribution as long at they cover the postage costs. Same goes for individuals wanting bulk issues to distribute to friends and interested persons.

If there is anything happening at the prison you are at or that is related to the "criminal justice" (or injustice) system, write to us and let us know about it so we can share it with our readers. Try to be brief as we don't have a lot of room. Don't worry about spelling or grammar or if you've never written an "article" before. We ask that you submit articles and such to us in a timely fashion, in other words, don't wait until December to tell us about incidents that happened in June. We have about a 4 to 6 week lead time between each issue, the lead time is so long because of the fact that Ed and I are both in prison and subject to the jackboot of repression and censorship that most editors aren't, i.e. segregation units, transfers, etc., so we need the lead time to avoid disruptions of our production schedule (which makes timeliness all the more important).

As we reported in our last issue, Washington state now has a small outside support group of prisoner's family and friends. It is the **Prison/Community Alliance**, P.O. Box 276, Kent, WA 98035. It will be focusing on issues such as getting rid of the parole board. We encourage our Washington state readers to support PCA and get involved with it. For more information call 859-4937 and ask for Carrie. Prisoners and loved ones need a voice to be heard in this state.

Also available is a listing of groups and publications which support prisoner's rights and prison struggle in over 20 countries. The list shows the groups name and address, if they have a publication, what language the publication is in and if it's free to prisoners (nearly all are) or how much it's prisoner rate is. If you want a copy send an SASE to me or to our publisher with a note saying it's for the prisoner rights list.

Please continue to send us donations of money and stamps as we need that to keep publishing, we don't have any corporate or government benefactors.

Women Prisoner's Hunger Strike In Texas

By Ana Lucia Gelabert

Gatesville, Texas, November 28, 1990. At 12 midnight tonight at least eight women prisoners at the Texas Department of Criminal Justice Mountain View unit will begin an indefinite hunger strike in protest of the scheduled December 6, 1990, execution of Texas prisoner Betty Beets: the first woman to be executed in Texas in several decades. Letters on the intent and reasons for the hunger strike have been sent to the Governor of Texas, prison authorities and the press.

Activists here smell a rat by way of a possible deal between lame duck governor Bill Clements, a Republican, who has vowed to execute a woman before leaving office and newly elected governor Ann Richards, a Democrat, in such a way that Clements carries the blame for such an unpopular act without tarnishing Richard's image as a liberal so early in her governorship.

Although the striking prisoners emphasize that the hunger strike is in no way a work stoppage, but a peaceful protest, prison authorities appear in a frenzy and increasing retaliatory actions against the strikers as they fear the hunger strike might spread out quickly and end up in a series of work stoppages throughout the Texas prison system.

Prisoner Assaulted By Guard

A prison employee was held liable for $1,000 after sticking the barrel of his revolver in the inmate's mouth and cocking the trigger. The prisoner had sought damages for assault in a federal civil rights suit against the prison employee. He claimed that the employee, in the presence of the employee's wife (also a guard), struck him in the head and then forced him to kiss his wife's shoes. He then allegedly put his revolver in the prisoner's mouth and cocked the gun.

While the prisoner suffered no physical injuries from these acts, the court found that they were "shocking" and constituted cruel and unusual punishment. The evidence established that the prisoner had instigated the circulation of a rumor throughout the prison that he was having a sexual affair with the employee's wife, and this was the motivation for the assault.

The court held that the defendant guard was "driven to," his assaultive behavior by the plaintiff's "disreputable and taunting behavior." The judge said the assault was an act of "passion done in righteous anger" and therefore warranted the "imposition of a more lenient remedy." The court thereupon imposed damages of $1,000. Needless to say, had the prisoner stuck a gun in the guard's mouth, regardless of provocation, he would have been given additional decades in prison. *Oses v. Fair*, 797 F.Supp. 707 (D. Mass. 1990).

Insufficient Facts To Support Exceptional Terms

Division One of the Washington State Court of Appeals has vacated an exceptional term imposed by the parole board due to insufficient facts in the record to support the sentence imposed by the board.

Luis Vega, while incarcerated at the Reformatory, participated in an assault on a fellow inmate. Vega ultimately pleaded guilty to second degree assault and the parole board imposed a 7½ year sentence. That sentence was subsequently reviewed by the board in 1987, pursuant to SHB 1400. At that review the board noted that Vega's SRA guideline range for the assault was 13 to 17 months, but went on to impose an exceptional minimum term of 34 months. One of the main reasons given for the imposition of an exceptional minimum term was "that this type of behavior [assaults] tends to seriously disrupt the orderly operation of the institution and warrants an exceptional sentence."

The Court of Appeals reversed the board, holding that: "The reason [given by the board] relates only to the **possible** effect of prison violence, i.e., the **tendency** of in-prison altercations to disrupt operations and lead to further violence. The reason is therefore so broad that it encompasses any assault occurring within a prison. Such a broad application violates the rule that '[a]n exceptional sentence is appropriate only when the circumstances of the crime distinguish it from other crimes of the same statutory category.' " The court also said the exceptional term violates the principle that decisions not to conform a redetermined sentence to terms presumed under the SRA should be the exception, not the rule. The case was remanded for a redetermination by the board. See, *In re Vega*, 59 Wn.App. 673 (1990).

X-Ray Searches Of Prisoners Found Unlawful

A claim that an x-ray search was ordered by prison security officials without medical authorization was not frivolous. The failure to inquire into the plaintiff's medical history to consider the possible cumulative effect of x-rays, to get a doctors order, to have medical personnel present, and to record the x-ray in his medical chart evidenced deliberate indifference.

The court also held that the search may have violated the Fourth Amendment. A "generalized penological interest in searching inmates for contraband" is not sufficient justification; reasonable suspicion that a prisoner is secreting contraband is required, and prison officials must show that less intrusive means would not detect the contraband. The manner of search is also important. Here, the x-ray was performed by a prisoner technician with no medical staff present and no medical history taken. See: *Nitcher vs. Cline*, 899 F.2d 1543 (8th Cir. 1990)

Prison Officials Liable For Not Correctly Computing Prisoners Sentence

A federal prisoner brought a *Bivens* action against the warden and administrative systems manager for failing to investigate his claim that his sentence was miscalculated. The prisoner repeatedly asked prison officials to correctly compute his sentence to show time he had served in a German prison. They refused to do so.

The prisoner filed and won a Habeas Corpus action in federal district court. He then filed a suit for declaratory and relief and money damages. The district court ruled for the prisoner and on appeal the 9th Circuit Court of Appeals affirmed the ruling.

District Judge Bilby told the defendants: "You see, that's one of the things about bureaucrats that bothers me. You just can't sit on your duff and not do anything." He further stated: "If you just sit around and don't do anything, you do run a chance of being responsible." The Court of Appeals agreed wholeheartedly.

The Court of Appeals ruled that when prison officials fail to take action that they have a clearly established duty to take and the failure to act is a contributing factor in the violation of a prisoners constitutional rights, a qualified immunity defense will not be available. See: *Alexander vs. Perrill*, 916 F.2d 1392 (9th Cir. 1990).

Legal News continued on page 8

Legal News *continued from page 7*

Deliberate Indifference Demonstrated

Proof of prison administrators' "consistent pattern of reckless or negligent conduct" in providing prisoners with medical care is enough to establish the deliberate indifference to prisoners' serious medical needs necessary to make out an Eighth Amendment violation and hence to subject the officials to civil liability. The December 4, 1990, ruling by the Eighth Circuit Court of Appeals upheld a lower court finding that the response of administrators at a Minnesota prison to an outbreak tuberculosis, which included a failure to develop written infection-control policies, to maintain adequate medical records, or to provide a full-time physical and medical director, amounted to deliberate indifference.

The court rejected the officials' contention that the Eighth Amendment requires that some sort of intentional deprivation of medical care be shown. It looked to City of *Canton v. Harris*, 489 U.S. 378 (1989), in which the Supreme Court held that a municipality may be held civilly liable for inadequately training its employees if that failure to train amounts to deliberate indifference to the rights of those coming into contact with the police. Under this ruling, "[l]iability attaches only when the failure to train amounts to a city policy or custom," the Eighth Circuit noted. Also instructive, the court said, is *Berry v. Muskogee, Oklahoma*, 900 F.2d 1489, 1469 (1990), which held that "an official or municipality acts with deliberate indifference if its conduct (or adopted policy) disregards a known or obvious risk that is very likely to result in the violation of a prisoner's constitutional rights." *DeGidio v. Pung*, 48 Cr.L 1257 (12-19-90).

Clallam Bay Prisoner Brutalized

By Paul Wright

On December 17, 1990, at about 6:35 in the evening several prisoners got into a fight in the F-Unit (Close Custody) rotunda area. Eventually guards carted the participants of that fight off to the "hole." At about 7:10 that evening Aaron Fast, a black prisoner, was called to the F Unit duty office. Present in the duty office were Sgt.'s Frank and Delong and six prison guards and counselor Kent Gonzalez. F Unit prisoners, locked in our pods, watched in horror as Aaron was browbeat into a corner by Frank and Delong who then rushed him and within seconds all 8 prison guards were on top of Aaron and he was hidden from view.

A few minutes later after Aaron had his hands handcuffed behind his back he was dragged out of F Unit, his face visibly bruised, screaming in pain that his arm had been injured. Some 10 minutes later he was taken from the segregation unit (which is down the hall from F Unit) to the hospital for treatment. It has been reported that Aaron's arm was broken during the incident.

Aaron had not been involved in the earlier fight in any way. He's also not a gang member nor affiliated with any gangs. Just like all the other cases of prisoners beaten by guards that I have witnessed here at CBCC, Aaron has the misfortune of being small in size and young, as usual, it was an all white gang of prison guards that brutalized him. [redacted] Complaints to prison officials about past beatings have resulted in no action being taken and the abuses continue.

Complaints have been filed on Aaron's behalf with the U.S. Justice Department, the Governor's office, the NAACP and others. As readers of *PLN* may recall, it was the beating of prisoner Terry Grant in March of 1990 that set off the riot in F Unit when outraged prisoners went to his aid and attempted to rescue him from the savage beating he was being subjected to in the F Unit rotunda. It appears that DOC officials prefer to let matters reach that stage than to train and discipline their staff. How many beatings does a guard have to be involved in before his superiors begin to suspect something is amiss?

As of this writing (Dec. 25, 1990) Aaron is still being held in the hole and all his attackers are carrying on duty as usual.

Habitual Criminal Case Update

You may recall that last year the Legislature passed SHB 1457 (now in RCW 9.95.013) which directed the Board to review all habitual criminal minimum terms and to apply SRA guideline ranges to them. You may also know that – as usual – the Board essentially ignored the law and re-determined habitual criminal minimum terms in only five (5) of the seventy (70) cases it reviewed.

In response, we organized an effort to challenge the Board's actions in the courts. Two (2) personal restraint petitions (PRP) were filed in the State Supreme Court to challenge the boards entire 1457 review process. However, the Supreme Court staff inaccurately report to the court that the two petitions raised issues that only affected a small group of people and hence the two petitions were transferred to Division III of the Court of Appeals.

Right after the transfer, three (3) other prisoners filed personal restraint petitions in the State Supreme Court, and others started filing in the Court of Appeals. The Supreme Court got the message and has now decided to hear the cases before it.

Evergreen Legal Services Attorneys John Midgley, Pat Arthur, and Bob Stalker represent us in the consolidated actions in the Supreme Court; briefs have been filed on though oral argument hasn't yet been set, we expect a decision next spring.

The Board says SHB 1457 doesn't limit its powers, and thus it doesn't have to set habitual criminal minimum terms within SRA guideline ranges. Prisoners are asking the court to order the Board to re-review all habitual criminal minimum terms and set them within the guideline ranges as SHB 1457 directs.

Prison's Water Contaminated

By Ray L. Levasseur

Prisoners at the U.S. Penitentiary, Marion, Illinois, have said for years that the government is poisoning us with contaminated water. The government has categorically denied these accusations. On September 28, 1990, a report issued by the Agency for Toxic Substances and Disease Registry (ATSDR) (U.S. Dept. of Health Services) confirms that the Marion water supply is toxic and presents a health threat to prisoners. The reports states that the most immediate concern is the high levels of Trihalomethanes (THM's), including chloroform, in the water. Some of the tested water samples contain more than twice the amount of THM's established as an acceptable level by the Environmental Protection Agency (EPA).

In 1979 the EPA established a standard of 100 parts per billion (ppb) for THM's in drinking water. There is general agreement among scientists, environmentalists and the EPA that this standard for THMS is not strict enough to protect public health. The recent ATSDR report shows concentrations of THM's as high as 245 ppb in Marions' water.

THM's are a carcinogen known to cause cancer. The best known THM is chloroform which can damage the liver and kidneys, cause headaches and depression and irritate the skin and digestive tract.

The ATSDR report contains an index which is a previous report done by ATSDR in 1986. It states that tests done in 1982-84 show unsafe levels of THM's and recommends that measures be taken to reduce the amount of THM's to a safe level and that prisoners be informed of the health risk. The Bureau of Prisons (BOP) took no corrective measures, did not inform prisoners of the health risk and continued to propagate the lie that the water was safe to drink.

A few days after the current report was issued, warden John Clark, ex-priest, BOP hatchet man and court jester, held a press conference in front of the prison. In another one of his publicity stunts he gulped down a glass of water, smiled at the cameras and proclaimed the water safe to drink. He didn't mention THM's, the ATSDR reports recommendation that the amount of toxins in the water be reduced.

All Marion prisoners drink contaminated water. We eat food prepared in contaminated water. We shower and wash with contaminated water. Our clothing and bedding are washed with contaminated water. Of additional concern is the higher vulnerability of some individuals to the effects of toxins. Stress, of which there is plenty at Marion, can make an individual more vulnerable as can those with weaker immune systems or illnesses. When THM's invade the human body it is on a mission to destroy.

All water samples examined by ATSDR were obtained and analyzed by government agencies or companies contracted by the government. Repeated requests to have water samples analyzed by parties representing prisoners have been denied by the BOP.

The main source of THM's in drinking water is the chemical interaction of chlorine disinfectant with naturally occurring organic material found in the water supply (dead plants and leaves). Excessive amounts of chlorine are used at Marion because the water is so filthy and foul tasting (according to the report this is due to the presence of manganese in amounts exceeding the level set by the EPA). Another reason for the heavy chlorine treatment is it's cheaper to use than other disinfectants and alternate treatment processes. Still another is that the health and well being of Marion prisoners means nothing to the government. A policy they've demonstrated over the years by violating virtually every rule of the United Nations Standard minimum rules for the treatment of prisoners (see Amnesty International's report on mistreatment at Marion prison, May, 1987).

The roots of our struggle at Marion, and all jails and prisoners in the American gulag, are interwoven with the economic class we are from. To those factories we've worked, construction crews we've labored on, fields we've harvested, and the cycles and under and unemployment. Interwoven also with the black, brown, and native American and poorer white communities; the neighborhoods, projects, barrios and ghettos of our birth. As a child I grew up next to a river and water supply polluted by textile mills and breathed the fumes spouting from a factory next door. Things haven't changed much in that regard, only gotten worse.

The government and corporations that use and abuse us show no respect for our rights. They won't unless we can put pressure on them. The government has been lying about Marion all along. Not just about the water supply and health threat to prisoners, but also about the purpose of Marion and the continual lockdown. They've made truth the first casualty in their so-called "war on crime" and drugs. We've seen it before: the Love Canals, uranium poisoning of Navejo miners, black and brown lung disease, exposure of thousands of workers, the insidious cover-up of Agent Orange poisoning of Viet Nam veterans, contamination from nuclear plants, etc. The list of bright shining lies of government hypocrisy and deceit is endless. It is part of the legacy and present day reality within the conflict between those who control our lives and those who demand social justice.

Ultimately we need to secure our rights and protect them through collective action. For prisoners, the organized support of people from our communities, along with human and civil rights groups, is essential. Solidarity, sisters and brothers, is our greatest weapon.

Raymond Luc Levasseur, is enduring a 47-year sentence in Marion Federal Prison for convictions related to a series of bombings of the New York city offices of the South African government and other corporate-military facilities. He was a co-defendant in the Ohio 7 seditious conspiracy trial that ended with a hung jury last year in Springfield, Mass. Readers are encouraged to write Levasseur, 103761016, Box 1000, USP Marion, Ill. 62959.

– Letters From Readers–

Letters from our readers are encouraged. Names of writers will not be published unless specific authorization is given to do so. We welcome the input of every reader. Here are some letters recently sent to *PLN*.

Exception To Slave Labor

I would like to commend the staff of *PLN* (issue #8) because, in my opinion, it is the best issue yet. I was impressed with the listing of competent authorities for the facts and figures presented in the articles. One thing though that I would like to see further comment on was the two cases from the federal appellate court which were not complimentary to prisoners' rights. The one which I thought was particularly irritating was the one which held that prisoners could be forced to work without it being contrary to the involuntary servitude clause of the 13th amendment.

I believe there are still [parts in the U.S.] in which criminal judges make the stipulation of "labor" a part of the judgment and sentence. This was at one time a general practice and it was common to see convicted felons sentenced to "five years at hard labor," and similar sentencing practices. In Washington state a sentence, by law, is to be "confined" (loss of liberty) and nothing else. Therefore, I believe it might be possible to successfully attach any arbitrary policy or practice of forced labor [on the grounds that] it would be punishment above and beyond the actual sentence, a "cruel and unusual" event, and a violation of the proscription against involuntary servitude.

D.H. Shelton, WA

[*PLN* responds: At some point, when we are considerably stronger, we would like to include the prison labor issue along side our struggle for the right to vote and otherwise participate in the process of bourgeois democracy.]

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Prisoners' Legal News

Working to Extend Democracy to All

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Sex Offender "Treatment" In Washington State
In Who's Best Interest?

By Dan Pens

The Washington State Sex Offender Treatment Program (SOTP) currently ensconced in TRCC receives national acclaim. They publish statistics which portray them as an unqualified success story. Taken at face value the statistics are impressive. The overall recidivism rate for sex offenders is somewhere around 80 percent. The SOTP claims a recidivism rate for their graduates of 20 percent. It's no wonder that, as one current participant reports, "they have tours of people from all over the country parading through here on an almost daily basis."

The statistics are deceptive. A closer analysis of how the SOTP achieves those impressive figures reveals a troubling story. Before we analyze, though, let's have a look at some of the details of how the program operates.

One of the most troubling aspects of SOTP is the absolute lack of confidentiality. For any mental health professional to provide meaningful treatment, there must be a level of trust between the therapist and client(s). Mental health professionals will tell you that this is a critical requirement of effective treatment.

Because of changes in the law made by the 1990 Legislature, **nothing** revealed by clients in the program is confidential. Anything they reveal about themselves **will** be used by the state to determine the inmate's future disposition.

Most people have heard about the "Civil Commitment" law passed by the 1990 state legislature. Here's a brief encapsulation:

"When it appears that: (1) The sentence of a person who has been convicted of a sexually violent offense is about to or has expired at any time in the past; ... and it appears that the person may be a sexually violent predator, the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a 'sexually violent predator' and setting sufficient facts to support such allegation."

The "sufficient facts" set forth in the petition can include any information gleaned from the inmate during the "treatment" process at SOTP. The absolute non-existence of confidentiality in the SOTP program combined with the civil commitment process is a powerful tool for state repression.

Pre-SRA sex offenders currently in the system are being urged to attend SOTP when they're within three years of their parole eligibility date (PERD). They're told, "If you don't attend SOTP the parole board will claim that you're not rehabilitated, and you won't be paroled." SRA prisoners are given a similar line: "If you don't participate in SOTP your refusal can be used against you in a civil commitment hearing." These sound like powerful inducements to attend the program. But what real choice do offenders have, knowing that participation in the "treatment" involves willingly volunteering "confessions" to every crime (both sexual and non sexual), every deviant act,

Continued on page 2

We're gonna give you the best available treatment... You just have to be totally honest with us.

Sex Offender Treatment *continued from page 1*

thought, or behavior they have ever engaged in, and knowing the state is free to use that information – all of it – in future disposition hearings? Obviously only two types of offenders will choose to participate: (1) the incredibly naive and (2) first time offenders whose criminal histories are possibly not extensive enough (they hope) to warrant filing a civil commitment petition. It's no wonder that the overwhelming majority of offenders refuse to subject themselves to this sham.

This initial choice – to attend or not attend – serves to screen out some of the worst offenders. They have the most to fear and the most to loose by spilling their guts in "treatment." Unfortunately there is another group of offenders who choose not to participate. Some sex offenders have no desire to change. They sit around in prison dreaming about how they'll re-offend after they get out. It's unfortunate that those who will most likely refuse to participate in SOTP are the same offenders who may pose the greatest threat to society upon their release.

Now what about those statistics? How can SOTP claim their amazing 20% recidivism rate? Clearly the offenders most likely to re-offend never enter the program. But the screening doesn't stop there. SOTP has a history of "flunking out" offenders they perceive as most likely to re-offend. As one recent participant reports, "I don't know what the exact figures are, but well over half of the participants are washed out of the program." It would appear that SOTP rigidly and jealously guards it's "success" rate. They kick out offenders who fit into any of several high risk categories. The offenders who graduate from the program are the few who were least likely to re-offend in the first place!

What does the overall statistical picture look like? How does the 20% recidivism rate stand up to closer scrutiny? Consider this: approximately 770 sex offenders are released from Washington prisons each year. Of that number, only about 50 are graduates of the SOTP program. If you used the 80% re-offense rate to calculate the recidivism of all 770 sex offenders, you'd get a figure of 616 who will re-offend. That's a pretty dismal statistic. But what effect does the SOTP have? Let's have a look.

Number Of Sex Offenders Released In One Year	Recidivism Rate	Probable # Of Re-offenders
SOTP Graduates = 50	20%	10
Other Sex Offenders = 720	80.0%	576
Total Combined Figures = 770	76.1%	586

As you can see, the complete picture tells a very different story from the amazing, *"Washington State Achieves 20% Recidivism Rate for Sex Offenders."* The overall recidivism rate remains a dismal 76.1% and the worst offenders are not getting treatment at all. It becomes obvious that achieving the skewed "20%" figure is a primary interest of the state's SOTP program. But who is best served by this statistic, the people in the community or the self-serving bureaucrats who feed off of the system that pays their salaries?

It's time we stopped reassuring ourselves with skewed statistics, and start work towards creating a treatment system that acts in the best interest of all of us. The community at large, victims, and sex offenders would be better served by a program that provides as much real treatment to as many offenders as possible. As long as the state wields the repressive club of civil commitment and denies offenders the assurance of participating in treatment without being punished for what they reveal; as long as we continue to screen out or flunk out the worst offenders, we're all being cheated of a chance for a better and safer world.

Review

A SAGA OF SHAME is a 20 page tabloid dealing with racial discrimination and the death penalty in the U.S. in it's current and historical contexts. A lot of the information has been presented before in other publications and *PLN* has reported some of the statistics in previous issues. *Saga of Shame* brings all the information together in one place. It also has an excellent overview of the U.S. Supreme Court's long history of tolerating racial discrimination as well as the racism in the application of the death penalty. This publication has a lot of food for thought not just for death penalty abolitionists but also for the wider anti-racist struggle. Highly recommended. For order information write to: Quixote Center, A Saga of Shame, P.O. Box 5206, Hyattsville, MD 20782.

Loss Of Legal Materials States Claim For Denial Of Access To The Courts

A prisoner's allegation that prison officials had accepted and lost materials essential to his pursuit of post-conviction relief stated a claim for denial of access to the court, even if the materials were not "irreplaceable." The Court of Appeals suggested that a higher standard of care may be required of prison officials when they deal with prisoners legal materials. See: *Gregory vs. Nunn*, 895 F.2d 413 (7th Cir. 1990).

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Disclosure Of AIDS Condition Violates Right To Privacy

The federal district court in New Jersey ruled that disclosure of a person's medical condition, especially exposure to or infection with HIV (the virus suspected of causing AIDS), is disclosure of a "personal matter" in violation of the constitutionally protected right to privacy. Such disclosure also violates the rights of family members as well as the infected person. The government must show a compelling interest to justify disclosing such information. See: *Doe vs. Borough of Barrington*, 729 F.Supp 376 (D NJ 1990).

Avenue To Attack Habitual Criminal Conviction

On January 8th the U.S. Supreme Court let stand a decision that a court can be ordered to review the constitutionality of a prior conviction before a person found guilty of a new crime is sentenced as a repeat offender. The case stemmed from a ruling by the 7th U.S. Circuit Court of Appeals that an Indiana man sentenced in 1981 to eight years in prison for two counts of battery, and an additional 30 years because he was deemed a "habitual offender," has the right to appeal an earlier conviction on which the habitual offender status was based.

William Crank was convicted in 1974 in Lafayette, Ind., of second-degree burglary, and served his sentence. He now contends that conviction (and thus the bulk of his latest sentence) is invalid because his attorney in the 1974 case did not adequately represent him.

The Supreme Court's refusal to hear the case, while a victory for Crank, was done without comment and sets no national precedent. (90-489, *Jack R. Duckworth, et al., vs. William E. Crank.*)

Treatment Effective Against Drug Use

As the debate wages over the best way to rid the country of drugs, a government report said research shows drug treatment has proven effective against repeated use and drug-related crime.

The government's triennial report to Congress, *Drug Abuse and Drug Abuse Research*, released January 16, called drug abuse a "chronic disorder," in which recurrences are common and repeated periods of treatment are frequently required. It said research shows promising developments in the drug treatment arena.

"By virtually every criterion used, there is good evidence that drug abuse significantly decreased following treatment," the report said. "Other destructive personal and social effects of drug abuse, such as drug-related crime, suicidal behavior, psychiatric problems, incarceration and unemployment, are also reduced."

Getting Tough Approach To Crime Fails To Produce Results

By Ed Mead

Anthony P. Travisono is the Director of the American Correctional Association (ACA), a national organization consisting of prison wardens and other high-level correction officials. He also edits *On The Line*, the ACA's official newsletter. When writing his Editorial for the January 1991 issue of that paper, Mr. Travisono outlined the record breaking growth in the number of people being sent to prison, and then concluded:

"The final answers to our problems are outside the criminal justice system. Either prevention systems must be developed in our schools or community agencies to target potential offenders or we must learn to punish less expensively and for shorter periods of time." (Editor's note: The option of screening school children for possible criminal tendencies is clearly not a viable one.)

He said that sentences are not likely to get shorter, pointing out that "[t]he October 1990 issue of *Corrections Compendium* reported that life sentences have increased by 45 percent in the last two years." After some additional figures on the growing length of prison terms, Travisono asked:"Are prisons going to become places for lifers with very little to do? Or are we going to begin to look more closely at what we are doing as a society and why we continue to punish so expensively?"

Travisono's "solution for the '90s is that we – the criminal justice system – must tell the whole sordid story, over and over again, to all who will listen."

Chase Riveland, the Secretary of Washington's Department of Corrections, was recorded in the minutes of the October 12, 1990, Sentencing Guidelines Commission meeting as making essentially the same point. He said "the state is currently locking up more property offenders and for longer terms under the Sentencing Reform Act than ever before. The crime rate is still increasing." He went on to add that "this incarceration spiral is not going to solve the problem."

New York state has learned this lesson first hand, after squandering billions of taxpayer dollars. They too adopted the option of building their way out of violent crime. Since 1983 the state of New York has spent $3.7 billion for new prison capacity. The New York prison population soared from 12,500 in the 1970s to 40,000 in the mid-1980s. Today they are looking for alternatives. Robert Gangi, director of the Correctional Association of New York, said "[t]he dramatic increase in the number of people locked up in New York ... has already cost the state millions in prison construction and operating expenses. This approach has gotten us no where. Statewide crime rates have gone up, not down. We cannot afford to continue to waste expensive prison space on people

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Getting Tough *continued from page 3*

who can be handled in other ways."

In spite of findings like these by the experts of this and other prison systems around the country, there is no willingness to take steps toward reducing populations or cutting back on new prison construction. The May 10, 1990, issue of the *Seattle Times* quoted Ruben Cendeno, director of the Division of Offender Programs for Washington's Department of Corrections, as telling a Washington Council on Crime and Delinquency sponsored forum that this state's corrections system is facing more overcrowding. He said: "It is projected that in the next six years the inmate population is likely to double." Washington's Chase Riveland agrees. He is quoted in the June, 1990, issue of *Washington State Corrections Employee News* as predicting that the state's prison population will double over the next five years. At the same time he said: "Our operating budget, currently at $490 million, will shoot to $1.3 billion by 1995."

The projected increases are in addition to an already staggering growth in jail and prison populations. In a special Report *Population Density in Local Jails, – 1988*, the U.S. Justice Department's Bureau of Justice Statistics (BJS) recently announced that between 1983 and 1988, 5.3 million square feet of new housing space and 29,000 guards were added to jails throughout the U.S. This is a 44 percent and 65 percent increase respectively. The BJS Jail Report also stated that during the five year period the inmate population grew by 54 percent – from 223,551 to 343,569 men and women. Consequently, jail housing space per inmate decreased by 6 percent, from 54.3 square feet to 50.9 square feet per prisoner.

The Bureau of Justice Statistics went on to issue its annual bulletin on prison populations. The report stated the number of state and federal prisoners in the U.S. grew by a record 76,099 prisoners during 1989. This figure now reaches a new high of 703,687 men and women in the nation's prisons. The number represents a 12.1 percent increase over the 627,588 prisoners held in 1988. Washington state had 5,816 prisoners at the end of 1988, and 6,928 at the end of 1989, for an annual increase of 19.1 percent. The report noted that at the end of 1989 there were 373,866 more prisoners than there were at the end of 1980, which is an increase of about 113 percent in the number of people incarcerated in the nation's prisons.

This trend has of course continued into 1990. The BJS announced that the nation's state and federal prison population increased by 42,862 prisoners, or six percent, during the first half of 1990. BJS director Steve Dillingham said: "The annual increase of more than 80,000 inmates from mid-year 1989 to mid-year 1990 was the largest annual growth in 65 years of prison population statistics." Nationally the number of prisoners per capita reached a record 289 persons incarcerated in state and federal prisons per 100,000 U.S. residents.

Federal, state and local governments spent $61 billion for civil and criminal justice in 1988, a 34 percent increase since 1985, the Bureau of Justice Statistics announced in its July 15, 1990, *Justice Expenditure and Employment, 1988*. Other findings in the report were that federal, state and local governments spent $248 per capita: $114 for police, $78 for corrections, $54 for judicial and legal services, and $2 for other items. Corrections accounted for almost one-third of the justice costs. Spending for corrections grew the most during that period, by 65 percent in actual (constant) dollars.

There is no end in sight. Prison populations are expected tn increase by about 68 percent by 1994, according to a report by the National Council on Crime and Delinquency. The study said the states will require and additional $35 billion to build and operate prisons over the next five years. Despite the increase use of incarceration, the report found, there has been no positive impact on crime rates.

Columnist Herb Robinson, writing for the *Seattle Times*, reported that the percentage of felons sentenced to alternatives to confinement has decreased from 25 percent in 1982 to only 7 percent of all felons in 1988. Robinson said: "If present policy directions were correct, there would be less pressure for building ... more prison space. Plainly, the policies now in place are not working."

Mr. Robinson is correct. The latest FBI statistics demonstrate that murders in the largest U.S. cities jumped by 20 percent during the first six months of 1990, and the percentage in Seattle was considerably above the national average. The FBI's *Uniform Crime Rate Report* also shows that during the same period rape and assault were up by 10 percent, and robbery was up by 9 percent. These increases boosted the overall violent crime index rate to 8 percent higher than the same period last year. Overall, the violent crime rate rose 61 percent nationwide over the last two decades, making the U.S. one of the most dangerous countries in the industrialized world to live in. Americans are seven to ten times more likely to be murdered than the residents of most European countries and Japan.

Today there are some 1.2 million Americans, more than the population of San Diego (the nation's sixth largest city), locked up behind bars. At the present rate of growth in the national prison population, warned Warren Cikins of the Brookings Institution, in the October 10, 1990 issue of *U.S. New & World Report* (p. 15), more than half of all Americans will be in prison by the year 2053. The other half of the population will presumably be working in the burgeoning corrections industry.

It is clear that this state has a lot to learn. According to the Bureau of Census' *Children in Custody* series, Washington state leads the nation in its confinement of juveniles in detention and state institutions. Washington has 1,211 juveniles in custody for every 100,000 population. The second ranked jurisdiction

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was the District of Columbia, which had 666 kids detained for every 100,000 people. The national average is 245 per 100,000. The Washington rate of incarceration of juveniles is more than four times the national average.

"Prisons should be primarily for violent offenders –and they must be humane," says the ACLU's *Briefing Paper* #2. "Inhumane prisons simply reinforce criminality, releasing back into the streets people who've become more anti-social and crime-prone than they were before incarceration." The ACLU concludes that "a serious anti-crime strategy must deal, first and foremost, with the root causes of prime-persistent poverty, lack of educational and employment opportunities, racial discrimination and social alienation."

There is statistical data supporting the relationship between social problems such as unemployment and education and crime rates. Professor M. Harvey Brenner of Johns Hopkins University, testifying before Congress (the Joint Economic Committee, Fall 1979), stated that high youth unemployment is the most significant factor affecting violent crime, because most such crimes are committed by young people. Brenner presented evidence that an increase of 1 percent in the ratio of youth unemployment to general unemployment, during the years 1945 to 1976, corresponded to a 12.2 percent increase in homicides by those aged 15 to 19, and a 17.2 percent increase in homicides by those aged 20 to 24. Assault rates increased 6.7 percent and 7.2 percent for those same groups, respectively, with the same 1 percent increase in the ratio. The same finding holds true for rates of mortality, morbidity, suicide, prison admissions, admissions to mental institutions and property crimes.

What is true for unemployment rates is also true of education levels. In a report issued last year by the Institute for Education Leadership the relationship between education and recidivism rates was examined. "Eighty-two percent of America's prisoners are high-school dropouts," the report said. By and large, the study found that states with the best rate of high-school graduation have very low rates of prisoners. Minnesota, with a best in the nation dropout rate of 9.4 percent, has the country's second lowest inmate rate – 60 prisoners per 100,000 population. The other top 10 states for low dropout rates are also below the national average of 228 prisoners per 100,000 population. Florida has the worst dropout rate, 41 percent, and one of the highest incarceration rates, 265 prisoner per 100,000 population. The results of the study would indicate that the prison system is absorbing a large amount of resources that otherwise might go to programs proven more effective in lowering recidivism rates. (A 1989 government study of hundreds of thousands of released prisoners fixed the nation's overall recidivism rate at 62.5 percent.)

Washington state, as well as many of her sister states, is paying in the neighborhood of $40,000 a year to confine each prisoner. It would take a substantially less amount of money and other resources to send an offender to Harvard for the purpose of making a nuclear physicist of him. Indeed, common sense would dictate that a healthy social order reinforce and strengthen weaknesses in the social fabric, such as criminal behavior. But instead society banishes offenders to remote locations, spending excessive amounts of money to punish these individuals, which results in the generation of alienated people full of a rage that ultimately gets taken out on wives, children, neighbors and the community in general.

As the ACLU's *Briefing Paper* #2 notes: "Calls for 'law and order' and the scapegoating of civil liberties are much easier than acting to ameliorate the conditions that foster crime, but such approaches will not make our society safer. As long as we are a society of haves and have-nots, we will continue to be plagued with crime, no matter how many police are deployed or how many new prisons are built."

> "There is something rotten in the very core of a social system in which crime grows even faster than the size of the population." Karl Marx and Friedrich Engles, *Collected Works*, Vol. 13, p. 515.

Toward Creating A More Equal Sentencing System

In 1981 the Washington state legislature enacted the Sentencing Reform Act (SRA) in order to change from a rehabilitation based system of corrections to a punishment oriented sentencing policy. Two additional reason for the change, as set out in RCW 9.94A.010 (2) and (3), were to:

1. "Promote respect for the law by providing punishment which is just."
2. "Be commensurate with the punishment imposed on others committing similar offenses."

For the most part the SRA has met its goals for those sentenced after the 1984 effective date of the act. But this more just and progressive approach to sentencing has not been fairly applied to the approximately 1,400 pre-SRA prisoners still in custody. According to the parole board's *1987 Report To The Legislature*, 53 percent of pre-SRA offenders had their term adjusted above the applicable SRA guideline ranges, whereas the courts, during that same period, imposed exceptional terms in only 3.7 percent of the cases, and over half of those exceptional terms (56 percent) were below the SRA range. Moreover, pre-SRA offenders have an additional hoop to jump through once they have completed the new board-imposed minimum term; they must be found to be "rehabilitated" before the board will release them.

What we have now is two disparate sentencing systems. The new SRA system in which punishment or just deserts is the guiding philosophy. Under this system an offender receives a fixed or determinate term of imprisonment, after the service of which he or she is released from custody. Under the old indeterminate sentencing system, however, the guiding

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Equal Sentencing System *continued from page 5*

principle is rehabilitation. The sentence has no rational ending point, and the offender cannot be released until the board certifies that the process of his or her rehabilitation is complete. The final result is that pre-SRA prisoners are serving longer terms with no specified release date simply because of some arbitrary date on which they happened to commit their offense. In short, the legislature's objective of doing away with disparity in sentencing is not being applied to everyone.

If as a progressive society we desire a fair and equitable criminal justice system, then let us also bring the remaining 1,400 people under the protection of the Sentencing Reform Act. How can this transition be made whole and brought to a completion? By exhausting the authority of the parole board, now known as the Indeterminate Sentence Review Board (ISRB), decommissioning them, and turning their duties and functions over to the judicial system.

What is needed to rectify the unfairness contained within the existing system is simply this, legislation that would in effect say:

"The Indeterminate Sentence Review Board will set minimum term release dates for all indeterminate inmates, except those who have legislated mandatory minimum terms. And minimum terms set by the ISRB and those imposed by statute shall stand as determinate sentences. Once the term is set the ISRB will have fulfilled its authority and said inmates shall be treated in the same manner and under the same criteria as post-SRA determinate sentence inmates.

"In the case of exceptional sentences, those above or below the applicable SRA range, a review board will be empowered to review cases on an individual basis. All exceptional sentences will be reviewed. The review board will consist of three Superior Court judges appointed by the executive branch. The judges will each have an area of responsibility broken down by geographical sections. Each judge shall be empowered to hold sentence reviews for those inmates on his/her case load. All rights and protections afforded SRA offenders at sentencing will apply to these review hearings."

One advantage to the community in this suggested legislation, in addition to the creation of a more just single sentencing system, would be the cost savings. According to the Report on the ISRB, issued by the Legislative Budget Committee on December 14, 1990, this savings would be considerable. "If the ISRB ... were to be eliminated entirely," the Report says, "the state would save approximately $3 million in the first year." The document goes on to state that the above figure "does not include the savings that would accrue from releasing from prison those people who have served terms beyond the [SRA] presumptive range. If this number is only 500 prisoners, the savings could be as high as $11 million per year."

In addition to abolishing the board and turning its functions and duties over to a three judge panel, RCW 9.95.100 must also be repealed. This is the statute proclaiming that pre-SRA offenders shall not be released until the process of their rehabilitation is complete. Since the term "rehabilitation" is undefined, and cannot be measured in any event, the statute serves only to maintain a dual and inherently unequal system of punishment in Washington state.

Editorial Comments

By Ed Mead

Here is another edition of our newsletter. We hope that you find it is a good one. The Prison/Community Alliance is going to be working toward getting rid of this state's parole board and will need all of the help that can be generated. If there is any way you can encourage your loved ones on the outside to attend the next meeting, please do so. Every now and then there comes a time when it is necessary to make a determined effort to overcome the demoralization and cynicism that paralyzes our forward progress. That time is rapidly approaching. If we are to be successful with the initiative campaign we will be needing the assistance of a lot of family members and supporters.

Also printed in this issue, entitled *"Creating A More Equal Sentencing System,"* is an article containing an outline of the proposed legislation we intend to have placed on the 1992 ballot though the initiative process. In our next issue we should have the exact wording that will be used, rather than the general outline contained here. But for now we need input from you on the overall adequacy of this outline. Once we have the proposed bill completed and submitted to the secretary of state for processing, it will be too late to incorporate your comments. So if you are a pre-SRA prisoner in Washington state, and want to voice an opinion with respect to the direction we are moving in, the next two months will be your final opportunity to do so.

The Clallam Bay prison (CBCC) in Washington banned our last issue because of Paul's article on guard brutality at that facility. Paul also received an infraction for so called "lies" contained within the offending article, specifically, that one of the guards had a history of abusing prisoners. Paul has been sentenced to 20 days in the hole and the loss of 30 days good time as a result of this infraction. The finding of guilt is pending administrative appeal, and litigation over the issue is in the process of being drafted. As you can see, being a prison editor carries with it certain risks.

The *PLN* stands 100 percent behind every word contained in the CBCC article. We have affidavits from about 10 percent of the CBCC population and some staff members regarding the full accuracy of the facts reported. We will continue to bring you news of importance, including patterns of physical abuse inflicted upon the imprisoned children of the poor. In return, we ask for your continued financial support.

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Paul and I welcome your submissions of artwork, articles, news items, etc. to the newsletter. We need the criticisms and comments contained in your letters, too. Send such materials directly to us, or to our Florida address if writing directly is a problem. In our last issue we had space for only one letter. We'll try to do better in that regard with future issues, as a lot of people like the letters section of the newsletter. Of course we always need donations of stamps and money from readers in order to continue publishing the *PLN*, especially since the recent rise in the postage rates. All U.S. readers should mail financial contributions to the Florida address; foreign subscribers are asked to send their donations to the applicable address listed in the box on page two.

Oh, one last thing, be sure to pass this paper on to other comrades when you are finished reading it. Each one teach one.

U.S. Now Has World's Highest Incarceration Rate

The U.S. now has the highest recorded rate of imprisonment of any nation in the world, according to a new report by *The Sentencing Project*. With over one million inmates in prison and jail, the U.S. surpasses both South Africa and the Soviet Union.

The study also found that black males in the U.S. are imprisoned at a rate four times that of black males in South Africa: 3,109 out of every 100,000, as compared to 729 in South Africa. The annual cost of incarceration for the U.S. was estimated at $16 billion, and for the estimated 454,724 black male prisoners, almost $7 billion.

"Despite all the claims, the same policies that have helped make us a world leader in incarceration have clearly failed to make us a safer nation," stated Marc Mauer, assistant director of *The Sentencing Project* and author of the report. "We need a fundamental change of direction, towards proven programs and policies that work to reduce both imprisonment and crime."

The study, *Americans Behind Bars: A Comparison of International Rates of Incarceration*, found that per 100,000 population, the U.S. incarcerates 426 people, South Africa 333, and the Soviet Union 268. A doubling of the U.S. prison and jail populations in the last decade has moved this country into the leading position. The report contends that U.S. criminal justice policies have unnecessarily contributed to the world-record imprisonment rates.

Congressman John Conyers (D-Miss.) stated: "This report illustrates the long term effect of the draconian criminal justice policies the United States has been implementing over the past decade, and is indicative of policies that have failed our people."

The report noted that, according to the most recent Justice Department study of recidivism, 62.5 percent of prisoners are rearrested within three years of release from prison. The document called for the repeal of mandatory sentencing laws, effective service and treatment programs, a redirection of the so called war on drugs, attention to community needs that will work to prevent crime, and for a national dialogue on the issues of crime and punishment.

Prison Discipline Study

The Prisoner Rights Union (PRU) in California in 1989 started a survey to determine the prevalence of extreme forms of discipline in the American prison system. To do so they mailed out questionnaires to prisoners in 41 states across the U.S. Based on useable returns from 650 respondents and a review of the literature on prisons and scholarly studies of staff on prisoner violence. Two of the scholarly studies relied upon in part involved staff and prisoners at the penitentiary in Walla Walla.

The study reaches the conclusion that extreme forms of discipline, ranging from beatings and assaults of prisoners to sensory deprivation for prolonged periods are the norm in maximum security prisons across the U.S. with little differences from state to state or region to region.

Most of the information received was from prisoner respondents. Prisoncrats in various states placed barriers to prisoners receipt of the questionnaire claiming that only studies approved by the DOC can be conducted. Despite this ban, 15 prisoners at WSR and WSP responded to the survey.

The survey showed that 70% of the respondents had personally witnessed beatings and other forms of physical assault on prisoners by guards, fists, boots and clubs being the most commonly used instruments. 74% reported this type of assault was done routinely or "occasionally" (at least once a month). 140 responded that the beatings took place while the prisoner was handcuffed or restrained.

The second major finding of the study was the pervasive use of "mental discipline," this being the use of verbal abuse, racial slurs, food tampering, frequent unnecessary shakedowns and body searches, false write ups and death threats. Only 10% of the respondents reported not seeing this form of discipline, indeed, the study concluded it is at the very core of incarceration with the purpose of "beating people down."

In examining the cause and victimology of severe discipline, the two leading causes that brought it about were: 1) Prisoners being verbally hostile to guards and 2) Prisoners refusing to follow orders. It being important to note that verbal hostility to guards is considered a minor security infraction in most U.S. prisons. The primary victim, according to 61% of the respondents is the "jailhouse lawyer." Based on comments on the questionnaires, the third highest category of prisoners victimized in this manner are prisoners who exhibit personal integrity, who verbally express their opinions, report prison conditions to people on the outside, file lawsuits and

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Prison Discipline Study *continued from page 8*

grievances are singled out for harassment and punishment. It is interesting to note the victimization was uniform across the U.S. and across security levels of prisons.

The study's conclusions must also be viewed against the backdrop of the specific techniques of physical and psychological control used by prison staff. A recent training manual for guards titled: *"The Book, Punishment and Correction"* describes the following techniques for maintaining order in a prison in a southern state.:

"How to break down supports that allow prisoners to undermine prisons security and discipline:

1. Physical removal of prisoners to areas isolated enough to weaken close emotional ties.
2. Segregation of all natural leaders.
3. Prohibition of groups forming that are not in the interest of the prison administration.
4. Convincing prisoners that they can trust no one.
5. Systematic distribution/withholding of mail and visiting privileges (especially with outsiders having anti-prison views).
6. Building the conviction among all prisoners that they deserve to be (and have been) abandoned by our good citizenry.
7. Prevention of any serious emotional ties among prisoners.
8. Permitting access to as few disrupting publications and materials as possible.
9. Moving prisoners that are resisters from one prison to another whenever they act up.
10. Use of techniques of character assassination to discredit and endanger uncooperative prisoners.
11. Making jailhouse lawyers pay for their suits against prison administrators and conditions.

The study has ample footnotes and a bibliography. If you want a copy, send $5.00 to: Prison Discipline Study, 1909 6th St., Sacramento, CA 95814.

The New And Improved Marion

By Paul Wright

As we were preparing this issue of *PLN* we received several articles describing the horrible conditions of control units in Florida, New Jersey and Marion, Illinois. Most Washington prisoners are familiar with the local version of this phenomenon: the Intensive Management Units (IMU). What these types of prisons all have in common, aside from innocuous names, is that their purpose is to break and crush prisoners mentally, emotionally and spiritually through a combination of isolation, sensory deprivation, deprivation of the most basic necessities, and an agenda of humiliation and domination (e.g. the beatings, shackling, digital rapes under guise of a "search", and verbal harassment, etc.) and in the case of Marion, contaminated water as well.

Some 35 states have built or are now building Marion type control units (California recently opened an entire prison at Pelican Bay modeled on Marion, i.e. complete lockdown). Marion was put on a total lockdown in 1983; prisoners are locked in their cells 23 hours a day, allowed 2 hours of outside yard a week and deprived of all educational and work opportunities. The prisoners can also be chained naked and spread eagle to their concrete bunks for "misbehaving." IMU is modeled on Marion and a number of Washington state prisoners have passed through Marion or are still held there. Marion is the trendsetter of U.S. prisons.

The government claims that those held at Marion are "the worst of the worst," that cannot be controlled at other prisons. Yet, in reality, the vast majority of Marion prisoners are no different than those held at most maximum security prisons. The main purpose behind Marion and that type of control unit prison is to contain and attempt to crush all efforts of prisoners organizing within prisons. Many of those at Marion are there for participating in work strikes, filing "too many" lawsuits, or having been political activists on the street. The government claims Marion holds only those prisoners with bad prison records, yet a high number of political prisoners and prisoners of war have been sent to Marion straight from sentencing court and have no "prison record."

Now the government plans to open a new super-max locked down prison to replace Marion. On July 14, 1990, ground was broken at Florence, Colorado, for a 2,100 bed prison with four levels of security, including a 550 bed super-max section. It is scheduled to open in 1993.

This prison will be similar in concept to Marion, just technologically "improved." Like Marion, there are health concerns due to toxic wastes nearby left over from mining and industrial processing. Despite this, no environmental impact statement has been made by the government.

People are organizing now to stop the building of this new torture chamber. The shut down of the Lexington High Security Unit at the federal prison for women in Lexington, Kentucky, has shown that these campaigns can be successful. We urge anyone interested to participate in this effort. Some 25% of all the prisoners at Marion are state prisoners, this affects all the prisoners in the U.S. as we are all subject to being sent to these types of torture units. For more information, please write to: Committee to End the Marion Lockdown, P.O. Box 578172, Chicago, IL 60657-8172.

– Letters From Readers–

Letters from our readers are encouraged. Names of writers will not be published unless specific authorization is given to do so. We welcome the input of every reader. Here are some letters recently sent to *PLN*.

Lawyer Uses Our Law

Thanks for publishing the *Prisoners' Legal News*. Besides giving good information about what is happening on the inside, the legal news is helpful. I especially appreciated being alerted to a recent case where an associate warden was found liable for damages for subjecting someone to a strip search without reasonable suspicion. Hopefully that will help obtain justice for a Walla Walla prisoner subjected to feces watch. In that case, the federal district judge conceded that the prisoner's Eighth Amendment rights may have been violated, but refused to find the warden who wrote the policy and imposed it to be "personally" liable.

F.D., Seattle, WA
(Attorney)

He Likes Us

I think what you guys are doing is great! I really enjoy the PLN. It is very informative to some of us and helps us to know our rights. I have come to see that these cops, administrators, etc. work best when we are kept ignorant of the facts. I believe the PLN is opening a lot of eyes, both inside and out. Keep up the good work!

J.G., Shelton, WA
(IMU prisoner)

Show Understanding To Sex Offenders

I must take exception to your disdain for sex offenders.

I realize that "rapos" and "baby rapers" are at the bottom of the totem pole, in and out of prison, but here is my point of view:

It is my belief that all prison inmates have a social problem or they **wouldn't be** in prison. It's just that sex offenders have tried to find solutions different from that of the burglar, armed robber, assaulter or murdered.

Did you just sit down one day and say to yourself "I think I'll be a criminal?" Of course not! It's the same with us. I didn't just sit down one day and say to myself "I'll think I'll be a rapist" (or child molester), it is something that builds up over a lifetime, usually beginning in early childhood. Most sex offenders were themselves victims.

So please, show a little more understanding towards us. "Never condemn a man until you have walked a mile in his shoes."

Name withheld, TRCC

I haven't stopped reading *"PLN,"* let me congratulate you for the good work you are doing. I've sent copies of it to Panama and elsewhere.

Gustavo, Miami

Thinks We Have Charm

I received *PLN* #6, #7 and #8 all together, with no accompanying explanation at today's mail call. Guess I won the administrative appeal filed over the banning of these issues. Anyway, I personally found these three issues superior by far to issues #1, #2 and #3. They were truly informative, very well written and edited, and extremely worthwhile. The politics of these is a report of facts, rather than a report of ideologies.

I like the idea of a national/international edition of *PLN*, and a local edition, except surely everyone local will want to get both. So I think the answer is not to do that. I believe (non-Washington readers) are as interested in the local stuff as any of the rest. In fact, I think the local stuff is the most educational of all, and differentiates the paper from just another general newsletter. I want to say the local scene gives it its "charm," but I realize how stupid it would be to say that, so I won't.

I am glad *PLN* is not real downbeat and whiney and sniveling like I thought it might almost have to be because of the circumstances. I think anybody who was not overly interested in *PLN* #1, #2 or #3 missed out if they failed to stick around.

P.S., Shelton, WA

Thank you for providing *"PLN"* to us. We've been getting it regularly. The articles are very helpful for us in understanding issues that we don't usually focus on in our political prisoner work.

Freedom Now, Chicago

Dear Comrade, I read your "Lines In The Sand" from *PLN* #7. Good lines against the capitalist hypocrisy and about the ... "ignoring the fact that it's not 'our' oil." Right! The problem is, from a proletarian point of view, the relationship between "centers" and "periphery" (we say the Triko-countries). That's right for the Western Gulf invasion, for the Palestinian question, the South African question as well as for the Latin American question.

Galleano wrote many good words, also in "Granma," October 28, 1990: "The end of history? For us this is no surprise. Five centuries ago, Europe declared that memory and dignity were crimes in the Americas. The new masters of these lands prohibited us from recording history and prohibited us from making it. ...Money works in the opposite way from people: the freer, the worse off it is. Economic neoliberalism, which the North imposes on the South as the end of history, consecrates oppression under the banner of liberty. In a free market the victory of the strong is seen as natural and the annihilation of the weak is legitimized. In this way, racism is elevated to the category of economic doctrine."

Giovannia, Marino Del Tronto, Italy

Will The Racists Please .nd Up?

By Paul Wright

The 101st Congress has passed the Racial Justice Act (RJA). What the RJA does is prohibit racism in the application of the death penalty. As currently applied a disproportionate number of the men and women on death row across the U.S. are Black, Hispanic or Native Americans. The RJA would allow a defendant in a death penalty to show that racism was a factor in being given the death penalty by introducing statistical evidence showing the death penalty is disproportionately applied against minorities. The RJA still awaits being passed in the senate where it has already lost once by a 20 vote margin.

Not surprisingly the Bush administration has lobbied extensively to defeat the RJA and 21 state attorney generals, including Washington's own Ken Eikenberry, have signed a letter opposing passage of the RJA. Among those who joined Eikenberry in opposition to the RJA are attorney generals: Siegelman (AL), Corbin (AR), Clark (AR), Woodard (CO), Kelly (CT), Bowers (GA), Jones (ID), Pearson (IN), Cowan (KY), Guste (LA), Moore (MS), McKay (NV), Del Tufo (NJ), Stratton (NM), Thronburg (NC), Henry (OK), Frohnmayer (OR), Preate (PA, Medlock (SC), Tellinghuisen (SD) and Meyer (WY).

Nebraska Attorney General Robert Spire also signed the letter but later changed his mind and publicly supported it's passage in a letter drafted by NY Attorney General Abrams and signed by Attorney General Humphrey (MN), Shannon (MA) and Tierney (ME).

Prisoners' Legal News
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Prisoners' Legal News

Working to Extend Democracy to All

Vol. 2, No. 4 April 1991

The LBC's Final Report To The Legislature
A Retreat From The Principles Of The SRA

By Ed Mead

On January 17, 1991, the Legislative Budget Committee (LBC) issued a "proposed final report" on the performance of the Indeterminate Sentence Review Board (ISRB). The LBC assessed the operations of the ISRB in the context of the dual sentencing system that still exists in Washington State. Their "finding and conclusions" reflect the philosophy of the report. It says, in applicable part:

> "We find that the current policies of the board, and its discretion in making release decisions, provide a greater measure of public safety protection than presently exists under the Sentencing Reform Act (SRA). There are and will continue to be people who will reach the end of their sentences but who will still pose an unacceptable risk to public safety if they are released. Under the [old] indeterminate system, these people can be denied parole or release until . . . their statutory maximum terms. For some prisoners this maximum is life. These same people under the [new] SRA would have to be released at the end of their determinate terms, even if there are compelling reasons to believe they will reoffend."

The LBC report "recommended a comprehensive review of the sentencing system" to be completed in 1991. This review, the report strongly implies, would provide the necessary reasons to pass laws to extend "preventive detention" to "dangerous" SRA prisoners. The LBC report doesn't contemplate eliminating the dual sentencing system. They seek to apply the very worst aspects of the old system to SRA offenders.

What the LBC report lacks, like everything coming out of the state these days, is any sense of fairness or justice. Their **only** yardstick of "justice" is the perceived demands of "public safety." Law makers should contemplate the gulf between today's sentencing mess and the principles **originally** contained in the SRA legislation.

The passage of the SRA made most terms more lenient, yet pre-SRA offenders have not benefitted. Similarly, two of the principles behind adoption of the SRA, as set out in RCW 9.94A.-010 (2) and (3), were to:

1. "Promote respect for the law by providing punishment which is just."
2. "Be commensurate with the punishment imposed on others committing similar offenses."

Moreover, Article 15 of the United Nations' *International Covenant on Civil and Political Rights*, of which the United States is a signatory, states that:

> "If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby."

The passage of the SRA made most prison terms more lenient, yet pre-SRA offenders have not benefitted thereby. These lofty principles seem to have been abandoned by the courts and legislature. They have been replaced with the hysterical battle cry for "public safety."

The LBC's get-tough-on-crime rhetoric will most likely result in the legislature's adoption of a sentencing system that is neither just nor protective of the public's safety. By following the reactionary recommendations of the LBC's report, the legislature will only further their retreat from the democratic principles of fairness; they will simply compound the injustices of today's dual sentencing system.

The arbitrary and capricious abuses of the ISRB must be curtailed. There is only one realistic option for the thousands of Washington state prisoners and parolees still suffering under the oppressive burdens imposed by the ISRB. That option is to diligently struggle for the abolishment of the parole board and replacing it with a three judge panel directed to eliminate the dual sentencing system. The best way to accomplish that, we believe, is to implement the initiative campaign being fought for by the *Prison/Community Alliance*.

While prisoners and their allies may ultimately be unable to obtain the number of signatures necessary to put an initiative on the 1992 ballot, the struggle to achieve this objective will work to build prisoner and family strength, and make it possible to promptly respond to other outrages (a strength initially lacking when it was needed to combat the digital rapes of IMU prisoners by prison custody). Moreover, by participating in the undertaking to obtain the initiative, we lay the groundwork for a statewide debate on the correct philosophical approach to criminal justice

Continued on page 2

The LBC Final Report *continued from page 2*

issues. This debate is essential lest the field be surrendered to the failed policies of today. For nearly every prisoner behind the walls, there are loved ones who are also doing time. The potential for progress exists; we need only make it happen.

Years of Change

By B. Roland Blankenship

One thing every old convict asks himself at one time or another is: Is prison change better than the old way of doing time?

Backing up to the days of slave labor when a simple complaint could buy you 8-28 days in the hole, I have seen each privilege fought for and won by convicts who were willing to stick their necks out and take that giant step to bring about a more humane way of living through a prison sentence. When I think of the guys who have fell and died by riot guns, clubs, the months of sleeping on a cold concrete slab and getting longer sentences in order to make things better for the ones yet to come, I must ask myself; was it worth it?

It would take a week to describe the price convicts have paid for clean sheets, decent working hours, a daily shower, clean clothing, more than 3 letters a week, tape deck/radio, a television and telephones, visitational rights of more than one hour a month. A law library, educational books and teachers to help us learn and earn an education. I never thought I would live to see the day we had IBM and Apple computers in prison. Not to mention real trailer visits and wearing our own clothing. Medical help consisted of two aspirins for a head ache or a heart attack. Either you lived or you died, no one cared.

Yes, things have changed a lot in the past 35 years, and I wish to god I could say that it was all for the better, but there are times I have my doubts. I remember an old con telling me about his brother getting killed for protesting against not being able to make a phone call home when his wife was dying, and after they finally put in a phone for the cons to use, some punk tore it off the wall because his mother wouldn't send him ten dollars.

Back in the old days you did your time and it was all you could do to mind your own business, now tattle tails run in packs and they think they are fooling someone by acting tough and calling other guys names.

Not many of us will be able to make it after we hit the bricks but I think those who will make it are the ones who take the time to educate themselves and learn a trade. It is better to have a hamburger with a wise man, than a T-bone steak with a damned fool.

And as I sat behind my desk in the prison library, I see some of the smartest men I have ever known doing things to help other inmates, and putting a newspaper together in hopes that they will be able to serve us with news and information that will broaden our knowledge and give us a legal sense of how we can help ourselves in a peaceful manner.

I hope none of their friends have to hear someone say, "So what? What have you done for me lately?"

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Panel Blasts BJA For Ending Drug Treatment Projects

A House committee has issued a report alleging that the Bureau of Justice Assistance (BJA), which manages the $492-million drug enforcement grants program, discontinued funding of drug treatment in prisons and jails, and then tried to mislead the committee into thinking that those funds had actually been increased.

"For [the Department of] Justice to deny drug rehabilitation to incarcerated convicts means it ignores one of the fundamental principles of incarceration, to rid our prisoners of addiction so they can function in society," said Rep. John Conyers, Jr., chairman of the House Government Operations Committee, which released the report. "Our prisons are becoming addict factories, moving them in and moving them out, failing to clean them up when we finally have them off the streets."

At the hearings a subpanel of the committee chaired by Rep. Bob Wise (D-W.Va.) probed reports that BJA was eliminating all drug treatment programs from the "discretionary" portion of the drug grants program. In response to a request from the subcommittee, BJA submitted a comparison of Fiscal Year 1989 drug treatment grants with those for FY 1990. But most of the funding in FY 1990 was for drug testing of arrestees, denial of federal benefits to drug offenders, and other projects that have little or nothing to do with drug treatment, the committee said in its report.

"The response from Justice has been to play games with the numbers and look the other way," Congressman Wise said.

Continued on page 3

Did DOC Lie On Computer Issue?

By Ed Mead

Back in the late '70s I was involved in an armed escape attempt from the state prison at Walla Walla. It was my first time in a state prison, and the experience was to teach me a lot about the low regard my captors had for the truth.

The escape was to be made at 8:30 p.m., after the Men Against Sexism (MAS) banquet, by some group members who were on the banquet's clean up crew. The visiting room would have been closed for hours at that point, so there was no possibility of anyone but MAS members and prison staff being harmed because of the escape effort.

The plot was busted a day or two before it was to take place, and all us would-be escapees were unceremoniously dumped in the hole. We were infracted for attempted escape, and in those infractions it was clearly charged that we were going to try to escape at 8:30 p.m., long after the visiting room was closed. Yet once we were safely locked up the warden met with both family members and selected prison leaders. He told them all that we had planned to escape at 1:00 p.m., a time that could have exposed wives and children of prisoners to gunfire. The lie had its effect. Prisoners did not support us.

That was then, and over the intervening years I've experienced a lot more disinformation and lies by prison officials. The most recent example (if one can believe the newspapers) deals with the issue of prisoners having computers in their cells. The apparent disinformation around this issue has also had an impact on prisoner consciousness. Last year the *PLN* printed a letter from a Walla Walla prisoner who had written in response to my article "The Struggle For Computers Is Continuous." He complained about our one-sided coverage of the issue, and cited the diversion of a $20,000 software program as an example of the bad things done by Reformatory prisoners when they owned computers. I printed the letter, but did not bother to mention that no such incident had ever taken place. It has been my experience that those infected with administrative disinformation are rarely open to new realities from their peers.

Prisoners at the Reformatory fought for, obtained, and self-policed the use of personal computers in their cells. In the more than three years the program was in effect there was only one arguably computer-related infraction. Some guy left a small amount of marijuana behind (not inside of) his monitor. He lost his computer, though if the drug had been left behind his radio or television he would not have lost either of them.

The computers were an outstanding program. Many former computer owners are out on the streets doing productive work in the computer field. None of them have returned to prison. And, because prisoners bought their own machines, this was done at no cost to the taxpayer. Indeed, the computer ownership program went so well that on July 27, 1987, some 14 months after the WSR computer policy had taken effect, the the DOC's Command Managers issued authorization for wardens across the state to set up similar programs at their respective institutions. All these wardens kept the existence of this authorization a secret. It only came to light as a result of litigation filed by prisoners over the taking of the computers.

The computers were not taken because of any abuses committed by prisoner computer owners, it was rather a direct result of Larry Kincheloe being appointed to the position of director of the Division of Prisons. One of his first officials acts was to launch an attack on the popular and successful computer ownership program at the Reformatory, and to prevent its spread to other facilities within the state.

We won't get into Kincheloe's sleazy tactics, but will instead focus on what we believe to be his lies. In the January 31, 1991 issue of *The Seattle Times* it was reported that Kincheloe "told legislators that inmates used disks and [computer] programs for jailhouse currency.... Inmates also used their computers to store hit lists, draw up accounting systems for drug and gambling operations, and even design escape plans, he said." All this is pretty heady stuff, is it not? Only a fool would allow computers in the hands of prisoners after such a terrible misuse of these machines. The only problem is that none of it was true.

Prisoners managed to secure a hearing before the Senate Law and Justice Committee on the computer issue. At the February 6, 1991, hearing our representatives presented the case for having computers in the cells. Then it was Kincheloe's turn to testify. When pressed by the senators, according to the *Seattle Times*, "Kincheloe said he had no examples of Washington inmates misusing computers." Well how about that!

The fight for computers is a continuous one. These machines were not taken for any reason but to limit the outstanding legal work prisoners were putting out on them, and to silence our use of computers in the furtherance of the struggle to extend democracy. The computer can be a legitimate tool of liberation. The next phase of this ongoing effort will be a trial in federal court over the unconstitutional manner in which these machines were taken. We have asked that the trial start on March 25, 1991. After the trial there will be another letter writing campaign, more articles on the subject, our representatives will be calling on the governor for a personal interview, and so on.

Computers mean good jobs with something approaching a fair wage; they mean a lower recidivism rate; and they mean the possibility of a qualitative boost in the impact prisoners can have in altering some intolerable realities. Please do your fair share. Every Washington reader is urged to participate in this ongoing campaign. Have your people write letters of protest to the governor, get your friends involved, donate stamps, circulate a petition. We will win this issue if each of us can do something, however small a part, toward putting this valuable means of communication back into the hands of prisoners.

From The Editor

By Paul Wright

Welcome to another issue of *PLN*. Next month will mark one full year of publishing *PLN*. This is our twelth issue. We started out planning to make it a four to six issue project to see what kind of a response we got. We started out with just Ed and myself and one person on the streets to take care of the printing and mailing of *PLN*. We ran into a problem when Mote, the outside person, objected to an article by Ed and refused to print that issue.

We were able to find someone else to print and mail *PLN*. It was still basically three people putting *PLN* together and mailing it. Since then we have slowly grown. We have a steady core of volunteers who are able to put *PLN* together each month, staple it and get it into the mail. We started out hand typing *PLN* on our respective typewriters, we are now desktop published. Ed and I would like to take this opportunity of our first anniversary to thank everyone that has helped make *PLN*, not only possible, but better and improved as we go on. We also want to thank everyone that has contributed financially or submitted articles, artwork, etc.

From our first issue *PLN* has been printed and sent to readers in some 20 other countries. We wouldn't be able to do this ourselves due to high postage costs. ABC Toronto and ABC Oxford have generously donated their time and money to print and distribute *PLN* to our overseas readers. We would like to extend our thanks and appreciation for these contributions by ABC Oxford and Toronto.

In the past year *PLN* has had it's ups and downs. We've been censored at one time or another at: WSR, WSP, CBCC and WCC in Washington state and by the Texas Department of Corrections. It is interesting to note that *PLN* readers languishing in Turkish prisons, under a military dictatorship, get *PLN* with no problems or hassles while *PLN* is censored in the "free" state of Washington.

At one point or another both Ed and myself have been infracted by our captors for articles in *PLN*, which goes to show everyone has a right to freedom of speech as long as it isn't exercised. Despite these crude tactics by our captors we have continued to publish *PLN*.

If this issue, or any future issues of *PLN*, has "Final Issue" written on the mailing label this means that you have been receiving *PLN* for a while and have not donated either stamps or money to help offset our costs. Which means that unless you donate whatever you can afford, or hopefully, what you think *PLN* is worth, you will be dropped from the mailing list. We don't have any corporate or government backers, our "overhead" is minimal, we rely entirely on volunteers to make *PLN* possible, our main costs are printing and postage and both have increased since we started. We understand that prisoners in control units, Marion, death row and some of the Southern states have little or no opportunity to earn funds to make a donation, but because we're in prison ourselves we also know that prisoners in population can come up with a few stamps to donate to help cover our costs. Please tell your friends, family and other prisoners about *PLN* and share each issue with others, the more readers we have the more awareness we create.

Lastly, we want to hear what you think of "PLN." If you like what we're doing, let us know so we'll keep on doing it; if you don't like it, let us know so we can drop it. We want feedback and suggestions to be better able to serve your needs, so don't be shy, write us!

More Federal Money For Prisons

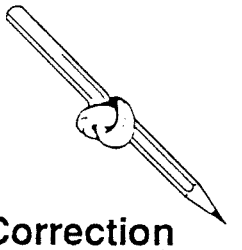
While critics of the Bush Administration have been arguing that the war on drugs has become a "non-war" since Operation Desert Storm began, the U.S. Justice Department says the fight to free the nation of the scourge of narcotics remains a top Administration priority.

Narcotics programs are the primary focus of DOJ's Office of Justice Programs (OJP) plan for the current fiscal year. In its program guide for discretionary funds (a total of approximately $119 million) OJP states: "The number one domestic problem facing our nation today is illegal drug trafficking and use.

"It is an insidious and unlawful activity that permeates many aspects of our society, damaging our health, our economy, our domestic security and most importantly, blighting the promise of our children and this nation," OJP states in the announcement of funding availability.

The answer to this problem is intervention that is focused, coordinated and aggressive, as well as punishment of both drug Traffickers and users that is swift, certain and appropriate. Drug users must be held accountable.

A key part of the Administration's anti-crime program is incarceration. "We're committed to incapacitating felons," the announcement stated. Our prison population in 1981 was about 25,000; today it is about 60,000; by 1995 it will be approximately 100,000.



Correction

Page 7 of Volume 2, Number 3 had an article on the "Prison Discipline Study." The third paragraph stated. "...Prisoncrats in various states placed barriers to prisoners receipt of the questionnaire claiming that only studies approved by the DOC can be conducted."

The sentence should have read: "Prisoncrats in various states placed barriers to prisoners receipt of the questionnaires. For example, in Washington state, prison officials claimed that only studies approved by the DOC can be conducted."

Habitual Criminal Case Update

For those who have been following the habitual criminal issue, there is some news. The lead case, *In Re Echman*, which is pending in the State Supreme Court, challenges the way the Board conducted 1457 reviews. It is argued that the Board was directed by the Legislature to review all habitual criminal minimum terms and apply SRA guidelines ranges. And since the Board did not follow the law, attorneys are asking the Court to order the Board to re-review the habitual criminal terms and to do as directed by SHB 1457 to apply SRA ranges.

Oral argument in *Echman* took place on January 23, 1991. The attorneys advised that everything went very well, and with some luck we should have a decision within a couple-three months. If this action proves successful, the Board will have to re-review all of the habitual criminal terms and apply SRA ranges and give adequate written reasons for not doing so.

Beating In The MANCI Control Unit

By John Perroti

MANSFIELD, OHIO – On February 8, 1991, in the super-max administrative control unit (AC-Isolation) at the Mansfield Correctional Institution (MANCI) high tech prison, designed after the U.S. Penetentiary at Marion, Il, 35 guards and high ranking prison officials opened six prisoners food slots – cuffed the prisoners behind their back and proceeded to enter the cells, beating each prisoner with their fists, boots and clubs. Two prisoners kicked their cell doors off the hinges but were restrained. These brutal beatings were unnecessary and excessive. The prisoners beaten were: Eric "Sudan" Swafford #178862; Mike Woods #152543; K. Patton #R132770; Ike Thompson #156151; Clay #216762; and Eugene Adams #144736. Adams was beaten so badly he required numerous stitches to his head. The beds and all their belongings were then removed from their cells and these men are forced to sleep naked on the floor with only a thin plastic mattress.

In sheer frustration of their situation, the prisoners have started a death fast, begun on the 9th of February, 1991. They will not eat until an investigation is started concerning the beatings, they receive proper medical treatment, their beds and property are returned, warm clothes issued to them and other demands to be announced. They request that outside groups call the prison and write letters to protest their conditions and monitor their situations. Letters of protest should be sent to:

Warden Daalberg
MANCI
P.O. Box 1638
Mansfield, OH 44901

Letters of encouragement should be sent to the prisoners at that same address.

John Perroti On Hungerstrike

John Perroti and his partner, Linda Leisure, have been on a hunger strike since February 14, 1991. Perroti has been held on a one man isolation tier – supposedly only until MANCI's AC unit opened. His visits have been restricted to one hour non-contact visit in full restraints – a month. His mail is censored and often destroyed and behavior modification practiced in full force. Prisoncrats refuse to release him from AC and refuse to transfer him to MANCI as promised.

Letters of protest of his treatment and requesting a transfer can be sent to:

George Wilson, Director
Dept. of Rehabilitation and Corrections
1050 Freeway Drive North
Columbus, OH 43229

Pennsylvania Lawmakers Want To Axe Parole Board

Leaders of the Pennsylvania House and Senate Judiciary Committees said they will introduce legislation this year to strip the Parole Board of most of its authority as a way to reduce prison overcrowding. The lawmakers said the number of state inmates would decline by at least 5,000 over 10 years by allowing most inmates to leave prison when their minimum prison terms end. It would also make sentencing more objective and understandable by the public, they said.

Sen. Steward Greenleaf (R-Montgomery), chairman of the Senate Judiciary Committee, said Pennsylvania is one of only two states that has both sentencing guidelines and a fully powered Parole Board. "We are operating under a system detrimental to both inmates and institutions," Greanleaf said. "Our antiquated system employs guidelines for sentencing, but at the time of parole eligibility the system essentially retries the inmate at the end of his sentence in what is often perceived as an arbitrary and high-handed manner."

The legislation would still allow inmates to be kept in prison for parole violations or serious prison misconduct. Those decisions would be made by the Corrections Department. Corrections Commissioner Joseph Lehman also supports the package.

Bush Keeps Crime On Front Burner

President Bush, who expressed disappointment with the limited crime control bill approved by Congress last year, has signaled that he intends to keep anti-crime initiatives on the national agenda this year, beginning with a national conference that was held last month.

In his State of the Union speech, the President said, "We're determined to protect another fundamental civil right – freedom from crime and the fear that stalks our cities. The Attorney General will soon convene a crime summit of our nation's law enforcement

Continued on page 6

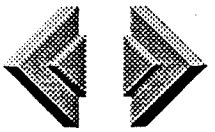
Bush Keeps Crime *continued from page 5*

officials. And to help us support them, we need tough crime control legislation, and we need it now."

The summit meeting, held in Washington between March 3-5, was sponsored by the Justice Department's Office of Justice Programs, and included representatives of the nation's top law enforcement agencies. The Administration used the meeting to push the legislative package that is expected to reach Capitol Hill soon. It will include four major provisions that failed to pass the Congress last year: limits on habeas corpus petitions by death row inmates; expansion of the "good faith" exception to the exclusionary rules to include cases where no search warrant was issued; the death penalty for "drug kingpins" in cases that do not involve murder; and mandatory drug testing of federal offenders on post conviction release.

Murder Case Update

Some of you with 1st degree murder convictions that occurred prior to July 1, 1984, have been appearing before the Board for so-called 1457 minimum term settings. Information received by this writer indicates that the Board is handing out very long terms in the vast majority of the cases, and it is using the SRA laws (which are harsher than the old ones) to guide the minimum term setting process. That application of the SRA has been challenged on ex post facto grounds by attorneys from Evergreen Legal Services in *In Re Thompson*, which is pending in the State Supreme Court.On Wednesday, January 23, 1991, the Court heard oral argument in *Thompson*. Attorneys report that everything went very well, though it is of course impossible to guess what the Court will ultimately do. There should be a decision within 3-5 months. If successful, all the reset minimum terms for Pre-SRA lifers serving 1st degree murder terms (**with** the possibility of parole) will be rendered invalid and re-instating the old 13.4 term eligibility review date.



".100 Hearings" Opinions Of An Attorney

by Barbetta Ralphs, Atty.

As an attorney, I concur with the person who believed the Board was "maxing out" the majority of persons to whom they have allowed .100 hearings, or, at the very least, given them extra time which is far beyond discretion, in my opinion. If the prison population falls dramatically, so will the necessity for high paid employees of the Dept. of Corrections and other affected agencies. Since nothing can be done to extend time for SRA inmates, it stands to reason that the only alternative of the Board, to justify its existence, and of the Dept. of Corrections, to continue to obtain funding for its high-priced upper echelon, is to give more time to the only inmates at their disposal, the pre-SRA group.

It is true that PRPs are not a "speedy form of relief;" the Court of Appeals, or the Supreme Court, can delay their decision until it becomes moot and meaningless. Counsel is not appointed at the Court of Appeals level, whether or not such should be done, so that attorneys who hope for some menial reimbursement end up "pro bono" which few sole proprietors can afford. Counsel is appointed at the Supreme Court level only on rare occasions.

However, if more prisoners would file a PRP when given more time at a .100 hearing, and it appears that there are many incarcerated who are able to show "abuse of discretion" on the part of the Board, and any other applicable legal basis, and then if those inmates would follow through, when denied, and take their case to the Supreme Court, and **then** follow through, if denied, and file in Federal Court, which cannot be done until all state remedies are exhausted, it might help to change the system. At the very most, it can't hurt. It is, in my opinion, the Federal Court system which must eventually be utilized if there is to be any help whatsoever concerning the abuse of the .100 hearings.

I also strongly advise every inmate who can borrow the funds, or who may have relatives willing to help him, to obtain a good attorney who is **for him** to represent him.

If there is no "rapport" with one attorney, it would be better to lose the money for the initial visit than to continue to allow this person to represent one. No attorney can guarantee success, but the present attorney should at least "guarantee" that the attorney will do his or her best, with a fresh viewpoint based on other experiences in the criminal system and at .100 hearings. A .100 hearing is a risk, any way that one looks at it, but as I tell my clients, I do not see this as all bad – it is a **chance** at release, and it gives one a chance to take legal action to appeal denial and the adding of excessive time, or, worse yet, "maxing out". I might also add that failure to appeal a denial may result in the next .100 hearing Board members adding still more time, to the "maxed out" point.

There is also one other strong factor which mitigates against release, and this in the nature of what one inmate does to another, namely: many of the persons who are or have been released do not believe they need to follow the "rules" set forth for them while on parole. It just can't be **that** important to report regularly, to call in, to resist drinking in a public place, carrying firearms, etc., but, worse yet, they can be released prior to the maximum date. We have all seen the results of tragic crimes committed upon release, but I have found very few inmates who actually believed their best interests, **and that of their friends or acquaintances in prison**, can be harmed by their actions outside of prison. If there were more "successes" upon release, the Board would have less justification for its actions.

Political Prisoners Hungerstrike In France

By Jean Marc Rouillan

[Editors note: this article is translated and based on a letter from Jean Marc to one of *PLN's* editors.]

FRESNES, FRANCE – The latest struggle here in France is a rolling hunger strike, one of us will not eat for a week, then another won't eat and so on, and other prisoners are also going on strikes and other forms of struggle and agitation. Our demand is an end to our isolation in control units, this is something that affects all French prisoners.

In July of 1989, members of Direct Action ended our second hungerstrike after being assured by the Ministry of Justice that we would be re-grouped in units of two and be treated in compliance with French law. This was soon shown to be untrue and we were progressively subjected to a new form of isolation.

Special control units of arbitrariness, prohibitions and restrictions were made for us, completely isolated from the prison population, with no recreation activities, work, study or sports available to us. We were/are locked in our cells all day except for the 2½ to 3 hours a day we are allowed to walk in a small yard with 2 or 3 prisoners chosen by the prison adminstration.

Since summer our mail and visits are extremely censored, we can only receive personal mail and certain publications (*PLN*, *Bulldozer* and *Arm the Spirit* get through fine, but other political journals are totally banned.)

The official compromise was never respected and the small gains we made have been slowly whittled away. Political prisoners have resisted this repression, the control units are a hypocritical fascade to maintain the fiction that in a "democratic" regime there are no political prisoners, only criminals. For the state, no struggle can be political if it is not integrated into the official system.

From control units to living units (where groups of 5 to 20 prisoners are cut off from the rest of the prison), to a system of differences and individualization, all is done to destroy unity and solidarity among the prison population, to isolate each prisoner before an oppresive institution; to break collective struggles. France is building 13,000 new prison cells based on the American example to be able to increase it's social repression.

Oppression And Resistance At Canada's Prison For Women

KINGSTON, ONTARIO – On February 12, 1991, Lorna Jones, a native prisoner, was found hanging in her cell. Her's was the fifth suicide by a native prisoner at the Prison for Women (P4W) in the last 18 months. Lorna had been serving a two year sentence for robbery and was due to be paroled in August.

On Wednesday, Feb. 13, 1991, with grief and anger over the death running high, especially for the prison conditions that drive prisoners to suicide, a group of 20 prisoners on "A" range refused orders to return to their cells, they blockaded a range and undertook the destruction of furniture, windows, etc.

The resistance was ended by the prisons riot squad using dogs, gas and physically subduing the women prisoners. The prison was locked down and at least 11 of the women involved were put in the hole where some were kept naked in tiny, cold concrete cells, one woman had an asthma attack and languished for three hours before receiving medical attention. The women involved are also facing numerous charges including rioting, destruction of government property, disobedience, assault and uttering a death threat. For their defiance and resistance to the conditions that are slowly murdering them they face increased harassment and repression.

On Feb. 8, 1991, there had been a vigil outside the prison by approximately 30 people protesting the inhumane conditions within the prison. Prison officials refused to meet with the group and one spokesperson stated he believed the fact that the women dying were largely native had little to do with the suicides.

To better understand the oppression of native peoples in Canada, not just in prison, the following excerpts from the *Native Womens Association of Canada* is helpful:

The death rate for aboriginal people is 1½ times higher than for non-aboriginal people, for those under 35 the rate is triple.

In Alberta, 30% of the prisoners are native while only 4% of the population is native.

In 1985, 60% of violent offenses by women were domestic disputes, the "victim" was usually an abusive spouse or common law partner.

Twice as many native women serve time as native men.

Native people make up 3% of the total population in Canada but 16% of all federal prisoners are native.

Native people in Canada have a better chance of going to jail or committing suicide than they do of graduating from high school.

"Our understanding of law, courts, police, judicial system and of prison are all set by lifetimes defined by racism. Culturally, economically and as peoples we have been oppressed and pushed aside by whites. We were sent to live on reserves that denied us a livelihood, controlled us with rules we did not set, and made us dependent on services we could not provide for ourselves. The Indian agent and police are for us administrators of oppressive regimes whose authority we resent and deny. Like other people around the world who live under illegitimate political structures, we learn that the rules imposed by this authority exist to be broken, that they are not our ways, that they are only the outside and not the inside measure of the way a person should act."

"For aboriginal women, prison is an extension of

Continued on page 8

Oppression And Resistance *continued from page 7*

life on the outside, and because of this, it is impossible for us to heal there. Prisons offer more white authority that is sexist, racist and violent. Prisons are then one more focus for the pain and rage we carry. For us, prison rules have the same illegitimacy as the oppressive rules under which we grew up. It is racism, past in our memories and present in our surroundings, that negates non-native attempts to reconstruct our lives."

To A Bureaucrat

You are as irrelevant
to my future
as I am to yours.
I have no power over you
and I seek none.
But, you are unhappy
to be likewise.

You pretend
to have influence
with the big people
enabling you
to pull the strings
of my destiny.

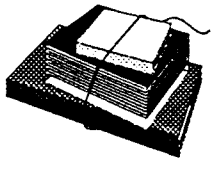
I am relieved
that you pretend.

Once we move on
from our present abode
you are, as I,
nothing.

What will separate us
and, thankfully, distinguish
you, from I,
is, of course,
your craving for the means
to control my life.

I am not important
you calmly agree.
That you are not important,
you furiously dispute.
Okay, then,
you are important
but...only to yourself.

Anthony McIntyre Long Kesh



Reviews

RESISTANCE: Documents and analysis of the illegal front. Is an irregular tabloid that has news and analysis of militant autonomist, anti-imperialist, national liberation, and anti-nuclear struggle in the advanced capitalist countries. The latest issue has articles about native struggle in Canada, a discussion paper on patriarchy from the Revolutionary Cells in Germany, the Resistance conspiracy case and more. Resistance is free to prisoners and costs $6.00 per year for "free people." Write: Resistance, P.O. Box 790, Station A, Vancouver, B.C., V6C 2N6, Canada.

WOFPP Newsletter is a monthly newsletter by Womens Organization For Political Prisoners. It covers the plight of women political prisoners, mostly Palestinian, in Israeli jails, their conditions of confinement (usually pretty brutal), charges against them, etc. For more information write: WOFPP, P.O. Box 31811, Tel Aviv 61318, Israel.

CHALLENGE is a quarterly journal that covers events inside Israel and the middle east. Recent issues have included articles on the conditions of confinement for Palestinian political and social prisoners, torture of prisoners by the Shin Bet (Israeli internal secret police), imprisonment and persecution of Jewish anti-apartheid activists in South Africa and much more. An excellent publication. Write: Hanitzotz, P.O. Box 1575, Jerusalem, Israel.

LOVE AND RAGE is a bi-lingual (English and Spanish) revolutionary anarchist newsmonthly. Each issue has at least one page devoted to prison struggle. The January 1991 issue is devoted to political prisoners in the United States and contains articles by political prisoners Leonard Peltier and Larry Giddings. Each issue has a lot of addresses for other journals and groups. Free to prisoners, $7.00 a year for others. Write: Love and Rage, P.O. Box 3, Prince St. Station, NY, NY 10012.

ACLU PRISON PROJECT JOURNAL is a quarterly magazine by the ACLU Prison Project. It covers issues on the cutting edge of prison law as well as trends and currents in the criminal justice system. Each issue also has a case law digest with recent cases analyzed and listed. Subscriptions are $2.00 for prisoners, $25.00 for others. Write: National Prisoner Project, 1875 Connecticut Ave. N.W. #410, Washington, D.C. 20009.

BULLDOZER: The only vehicle for prison reform. This is a bi-monthly tabloid paper that is always filled with interesting and informative material on prison conditions in the U.S. and elsewhere, native American struggles, news on political prisoners and more. Highly recommended. Free to prisoners, donation requested for others. Write: Bulldozer, P.O. Box 5052, Staion A. Toronto, Ont. M5W 1W4, Canada.

COALITION FOR PRISONERS RIGHTS Newsletter is a small monthly newsletter with short articles and letters on prison conditions across the United States. Free to prisoners, donation for others. Write: CPR, P.O. Box 1911, Santa Fe, NM 67504.

ANTIGONE is a quarterly publication of the National Committee on U.S. Corrections. It is similar to *PLN* in format and has an emphasis on Michigan prisoners. Each issue has legal analysis, news on legislation and such affecting Michigan prisoners and cartoons and graphics. A years subscription costs $3.00 for prisoners; $7.00 for "free" people. Write: Nat. Comm. on U.S. Corrections, P.O. Box 308, Farmington, MI 48332.

– Letters From Readers –

Letters from our readers are encouraged. Names of writers will not be published unless specific authorization is given to do so. We welcome the input of every reader. Here are some letters recently sent to *PLN*.

Women's Report

Prisoner's Legal News is an excellent monthly magazine that I sincerely hope is generating interest and financial support, to which I will soon be adding.

The major concern among most women in prison is the welfare of their children, many of whom were declared to be wards of the state upon their mother's arrest. Over 90% of women in prison are mothers, and the majority of those are single mothers with sole custody of the children. What happens to the children of female prisoners?

Other than that, it has been my experience that most women in prison are not inclined to be actively interested in political issues. There are many reasons for this, including the low level of literacy and the havoc that drug abuse has wreaked upon their minds, but I believe that the fundamental reason lies much deeper. Most women who are in prison today have all their lives been dominated by another person, usually a male. They have been made to feel that they are powerless alone, and that they must be dependent and subservient in order to be acceptable. They have very low self-esteem, and they do not believe that they have any control over their future. The attitudes exhibited by them in prison are by-products of the low quality of their life outside of prison; thus, it cannot be expected that they would get locked up and suddenly become "revolutionary." After all, please remember that many of these women are so-called "street people." They have no stable home, they have no husband, they have no job, they have no education. They do have drug and alcohol addictions and a basket full of babies. In prison they have food, clothing, shelter, and no responsibilities. My friend, I am neither cruel, naive, nor facetious. But so many women are so accustomed to domination that nothing inside them instinctively rebels (as it does in a man) against being told to go to your room, sit down, go to bed, be quiet, be "good," and "behave." Female prisoners are treated like small children and they timidly obey; therefore, they rarely incur the physical brutality rampant in prisons holding men.

All single cells are double bunked, some with beds less than two inches from the toilet. There are PCB's in our drinking water, and the smell of the sewer rises from the sinks in our rooms and from the showers. Have the law clerks initiated litigation? Do reindeer really fly? Not only have they not initiated litigation, but they refuse to help those who express interest in filing suit. They don't want to get in any "trouble," don't ya know.

LF, Dwight, Illinois

Shelton Changes

I am a 25 year old inmate serving time in the Washington State Correction Center at Shelton. Since my incarceration here at Shelton I have watched expensive reconstruction projects occurring rapidly, such as Birch and Spruce Halls turned into more R-units, more fencing and razor wire, as well as stadium lights that are bright enough to light-up Candle Stick Park on the darkest evening. They actually had to use a helicopter at taxpayers' expense to install these lights, a total of about 35 to 40 of them. There is talk among the teachers and inmate students that the education building's days are numbered. This would mean no education, no chaplaincy and another of several disjointed arrays of the superintendent's pet prison industry endeavors. There is also talk that Pine Hall will become S.O.C. housing the most seriously disturbed and dangerous felons in this state. This should frighten the tax paying citizens in Shelton to death. There are other things I have made no mention of at this time in fear for my safety as a prisoner. But to make it short this is becoming a maximum security facility quickly. I urge the people of this state to question Mr. Peterson, Secretary Chase Riveland, your legislators, and the governor. I urge you to hold them accountable.

D.F. Shelton C.C.

Thanks

The *Prisoner's Legal News* is a very interesting and informative newsletter. It is professional in every way – format, content, etc.

Leroy Mobley, National Director
NAACP Prison Program

Our Muckraking Is Good

First off, that was an exceptionally good article in Vol. 2, No. 2 of *PLN*, entitled "Parole Board Audit Report. All the articles and legal news were good, but I thought that one deserved special mention. Likewise, I've just finished reading Dan Pens' article "Sex Offender Treatment' in Washington State" [Vol. 2, No. 3]. I liked Dan's article. It is to date the best, and most thoughtful "expose" of that farce at TRCC that I have yet had the pleasure of reading. More writings of that quality reaching the "public" outside through such channels as the P/CA and other citizen/victim groups, I feel, will do our struggles immense good.

M.R., Shelton, WA

Non-English Messed Over

Many of our inmates are Mexican and/or Central American citizens. They are called up to legal mail line and receive registered letters from their home countries. These letters usually contain a few well worn, soiled American dollars.

The institution counts them and has the inmate sign for postage to return the few pitiful dollars to the sender!

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Letters *continued from page 9*

Because of rules that say the institution will only accept money orders, these poor people are unable to have the cash put on the books. The cash is returned to their loved ones, probably by regular surface mail which may or may not get to the sender. This is a crime.

I lived in Guatemala and Mexico for a few years, but my Spanish is really terrible. Someone needs to file something to stop this cruel practice.

People in those countries are poor. They cannot afford to lose dollars, and the few dollars they could spare for their loved one who is a prisoner of the American system are sent with total love. Like the widow's mite in the Bible...

They also cannot get P.O. money orders to send their loved ones, they must send cash. Is this done at your institution?

H.B., Shelton, WA

The Prison/Community Alliance (P/CA) is a group of Washington state prisoners and concerned citizens whose goal is to abolish the Washington state Indeterminate Sentence Review Board, AKA the parole board, and bring all indeterminate sentence prisoners under the new SRA guidelines. The courts and the legislature are unwilling to abolish the parole board, so the way the P/CA is focusing on doing this is the ballot initiative, to let the voters of the State of Washington decide whether or not they want the parole board.

P/CA does not need money, they need people willing to get involved and make their voices heard. PLN will cover new developments as they occur. To get involved or for more information please contact: P/CA, P.O. Box 276, Kent, WA 98035.

Prisoners' Legal News
P.O. Box 1684
Lake Worth, FL 33460

Prisoners' Legal News

Working to Extend Democracy to All

Vol. 2, No. 5 May 1991

A Saga Of Shame

The Case of Mumia Abu-Jamal

By Equal Justice U.S.A.

Mumia Abu-Jamal is an African American Journalist and advocate for racial and economic justice. He is currently on death row in Pennsylvania.

In 1982, Abu-Jamal was convicted of killing a Philadelphia police officer and sentenced to death despite evidence that seriously questions his guilt and points to his innocence. Over the last decade, appellate courts have refused to recognize the racial and political biases that violated Abu-Jamal's human and constitutional rights and led to his conviction.

Abu-Jamal has always maintained his innocence. What transpired the night of the shooting still remains unclear. According to eyewitnesses at the trial, Abu-Jamal was driving a cab when he came upon a Philadelphia police officer beating his brother who had been stopped for making a wrong turn onto a one-way street. Also according to eye-witnesses, someone entered the scene, fired on the officer and then fled. It is clear that Abu-Jamal was at the scene and took a bullet in the abdomen that left him bleeding on the curb when the police backup arrived. It remains unclear who fired the shots that killed the police officer.

Witnesses maintain that Abu-Jamal was beaten at the scene. One witness testified that forty-five minutes elapsed before he was taken to the hospital where Abu-Jamal maintains he was beaten again. It took two hours of surgery to remove the bullet that had perforated his liver and lodged in his back.

All of Abu-Jamal's direct appeals have been exhausted. He is currently one of over 100 people on death row in Pennsylvania, being held at Huntingdon State Prison. In late October 1990, the U.S. Supreme Court denied his petition for a rehearing. A death warrant can be signed at any time. Like all death row inmates in Pennsylvania, he is denied contact visits. Because he has refused to cut his dreadlocks, a violation of his religious beliefs, he is under disciplinary action and lives in conditions more draconian than any other death row prisoner. He is denied family phone calls and access to television and radio. Books are deemed contraband and routinely denied, and his mail is read and often censored by prison authorities.

Throughout his trial, the prosecution attempted to raise Abu-Jamal's political history, specifically his membership as a teenager in the Black Panther Party (BPP). The court upheld the defense's objections until the last phase of the trial – the sentencing phase. During this phase, Abu-Jamal – exercising his constitutional right to address the jury - was interrupted by the prosecuting attorney who proceeded to cross-examine him on his membership in the BPP and political views in that period. Using as evidence a 1970 *Philadelphia Inquirer* article which quoted Abu-Jamal (then sixteen-year old lieutenant of information for the Philadelphia branch of the BPP), the prosecution implied strongly that Abu-Jamal had been waiting twelve years for an opportunity to "kill a cop." To the nearly all-white jury, the admission of this evidence was especially damaging to Abu-Jamal.

Though the defense objected to the interruption and this line of questioning, the court overruled and exercised no restraint. Such proceedings violated not only Abu-Jamal's right to address the jury but also his First Amendment rights of freedom of speech and association. The Pennsylvania Supreme Court did not agree, however, **concluding that allowing Abu-Jamal's political views to influence the jury's sentence was not the same as punishing him for those views.**

Such political bias is not a new phenomenon in the realm of criminal justice. Documents from the FBI's Counterintelligence Program (COINTELPRO) that have been made public reveal that the Bureau was not only involved in harassment and surveillance of political activists, but also in the falsification and suppression of evidence that led to many convictions.

One important example is the case of Dhoruba Bin Wahad, a former leader in the NYC branch of the BPP. In 1971, Bin Wahad was convicted of the attempted murder of two NYC police officers and sentenced to 25 years to life. Bin Wahad's attorney filed a federal civil rights action against the F.B.I. and the New York Police Department in 1975. As a result of this action, 300,000 pages of COINTELPRO documentation were released, detailing an extensive campaign to destroy the BPP and other Black liberation organizations. The documents revealed that information which clearly pointed to Bin Wahad's innocence had been

Continued on page 2

A Sage Of Shame *continued from page 1*

deliberately suppressed. Faced with reopening a politically embarrassing case, the New York State court overturned the conviction and Bin Wahad was freed on March 22, 1990.

Abu-Jamal's is not an isolated case. It needs to be understood within the broader context of injustices within the U.S. legal system.

As Quixote Center's *A Saga of Shame – Racial Discrimination and the Death Penalty* point out, nearly 50% of all people on death row are non-white. Black males alone make up 43% of U.S. death row inmates although they represent only 6% of the U.S. population at large. Of the 142 people executed since the U.S. Supreme Court reinstated the death penalty in 1976, no execution resulted from a case involving a black victim and a white defendant.

Prison demographics are similar to those of death row. Fifty percent of the U.S. prison population, which has doubled in the last decade, is non-white. The majority were unemployed or underemployed when they entered the system. Not surprisingly, most sentences are for economic crimes such as larceny and burglary.

Put in a global context, the U.S. has the highest rate of incarceration in the world. **An African American male is four times as likely to go to jail as his counterpart in South Africa, making the U.S. the leading incarcerator (per capita) of people of African descent in the world.**

Of Pennsylvania's death row prisoners, well over half come from Philadelphia. 90% of the Philadelphia inmates are African American. Most are poor. Court-appointed attorneys must go to federal court to be compensated because of the city's dire economic situation. Despite such constraints and evidence of racial discrimination, the district attorney's office continues to pursue capital cases with zeal.

The Philadelphia Police Department has earned a national reputation for its brutality, especially against the African American community. During the days of COINTELPRO, the department – headed by Frank Rizzo - had served as the F.B.I.'s "cooperating local police agency." In August 1970, Rizzo personally led a night raid on the local BPP headquarters where a SWAT team dragged the dozen or so people present (including Abu-Jamal) into the street. They were strip-searched at gunpoint and kept naked on the sidewalk until they were arrested. All were soon released because no meaningful charges were ever filed.

Not surprisingly, both as police chief and mayor, Rizzo was frequently charged with brutality and racism in his words and actions.

Clearly, justice is not being served in the case of Mumia Abu-Jamal. His case is riddled with examples of racial and political bias as well as violations of due process. The death sentence that he has received is, in itself, an injustice. Though Pennsylvania has not carried out an execution since 1962, current Governor Robert Casey has signed 10 death warrants since taking office in 1986. **You can help stop this murder before it resumes. This advocate for racial and economic justice now needs advocates for his life.**

Write to Governor Robert Casey and call on him to do whatever is in his power to prevent Abu-Jamal's execution and to foster his release or retrial. Insist that the Governor stop signing death warrants.

Governor Robert Casey
Main Capitol Building, Room 225
Harrisburg, PA 17120

Send a copy of your letter to Equal Justice U.S.A., your local newspaper and to Mumia Abu-Jamal at:

AM #8335, Drawer R
Huntingdon, PA 16652.

GRAPO Hungerstrike Ends

PLN has reported previously on the progress of the hungerstrike in Spain by some 42 imprisoned members of GRAPO (Anti-Facist Resistance Groups, First of October) and of the PCE(r) (Communist Party of Spain, reconstituted). The strike began on November 30, 1989, and ended February 2, 1991. This makes it one of the longest running hungerstrikes in modern history.

Among the demands made by the prisoners was a end to isolation in control units, to be recognized as political prisoners and to be regrouped in one prison so as to continue their political education and maintain their identity. This was vigorously opposed by the Spanish government who holds a total of over 1,000 political prisoners. During the strike Jose Manuel Sevillano died of heart failure due to malnutrition. To prolong the hungerstrike the government force fed the prisoners. Several government officials, to include the head of prison medicine in charge of the force feeding, were executed during the strike by operational GRAPO units.

The hungerstrike was seen as being of great importance in light of the planned European unification in 1992 which could set the guidelines for dealing with all political prisoners in Europe, i.e., isolation, psychological torture, etc. Demonstrations in support of the hungerstrikers took place throughout Spain as well as across Europe, in the U.S., Canada, Japan and other countries.

Subscribe to the Prisoner's Legal News!

If you have not made a donation of stamps or money to PLN, please do so now. Send such contributions to Prisoners' Legal News, P.O. Box 1684, Lake Worth, Florida 33460. Mail your submissions of articles, artwork, etc. to either:

Paul Wright #930783
Box 5000, HC-63
Clallam Bay, WA 98326

Ed Mead #251397
P.O. Box 777
Monroe, WA 98272

(If you are located in Europe or the Middle East send financial contributions to Oxford ABC, Box ZZ, 34 Cowley Rd., Oxford, England. Readers in Latin America, Australia and New Zealand should send their PLN donations to Toronto ABC, P.O. Box 6326, Sta. A, Toronto, Ont., Canada M5W 1P7.)

Still Stuck In The U.S.A.

From: Out Of Time 2/91

The U.S. department of in-justice denied repatriation to Italy for Silvia Baraldini. Silvia is a political prisoner, presently incarcerated in federal prison in Marianna Florida, serving a forty-three year sentence. Charged in 1982 with five acts, she was convicted on only two - an attempted armored car robbery in 1980 that never took place and conspiracy in the 1979 escape from prison of Black Revolutionary Assata Shakur. No one was hurt in either act and Silvia had no prior record in any court. In fact, the evidence against her was flimsy, based on the word of a single informer who testified against fifteen persons.

Under the terms of an International Treaty on the Transfer of Sentenced Persons (Strasbourg Convention) signed by the u.s. and Italy among other nations, Silvia was legally eligible for transfer to an Italian prison. There are also humanitarian and medical reasons for her repatriation. The Italian Prime Minister and many Italian Parliamentarians had personally asked the Bush administration for Silvia's return: thousands of petitions and letters were sent from Italy and this country to the u.s. attorney general's office.

The Release Silvia! Committee in the u.s. and the committee in Italy are going to continue their campaign to pressure the government to apply the Strasbourg Convention in a uniform manner (other convicted persons from Italy have recently been repatriated). The plan is a year long campaign culminating December 1991 when the original decision is supposedly reviewed. We'll keep everyone up to date in future newsletters and/or mailings. If you want more info or want to work with us please write to Release Silvia! Box 30 3543 18 St. San Francisco, CA 94110

Prison/Community Alliance Update

By Martin Roth

The Prison/Community Alliance has received a lot of letters state-wide from organizations, as well as individuals, who are interested in and supportive of our stated objectives. Several of these contacts were made as a result of those of you who have shared news of the P/CA, through the Prisoners Legal News, with each other. We are extremely pleased with the response, both from prisoners and those in the "free world" community. It has enabled us to establish a foundation of support among diverse organizations with mutual concerns. The Prison/Community Alliance is an organization that hopes to serve us all – prisoners and citizens alike, and, in that sense, intends to represent our needs and concerns to the fullest extent of which we are capable. Your continued interest and support is crucial.

Let me bring you up to date on recent activities.

The *P/CA* and members of the Community Help Foundation Unlimited met with Senator Gary Nelson, Chairman of the Senate Law & Justice Committee in early March. The focus of the meeting was the Initiative. Senator Nelson appears 'closed' to the idea of the Initiative. He seems to favor the continued existence of the Indeterminate Sentence Review Board (ISRB). One of his statements was to the effect that "As soon as a determinate inmate gets out and commits a heinous crime, the public will be clamoring for the reinstatement of the parole board!" The *P/CA* knew that the Law & Justice Committee is a supporter of the ISRB. In mid-February Senator Nelson's committee met and discussed the Legislative Budget Committee's performance audit recommendations. The preliminary and final recommendations of the auditors is that there be a comprehensive review of sentencing in the state of Washington addressing the issues of end-of-term review, current statutory maximum terms, program availability for prisoners, community supervision, budgeting and forecasting, and operations and staffing plan for the board. Senator Nelson's comments at that time were that it was felt the previous "review" (i.e., the Community Protection Act and H.B. 1457) was sufficient!

The *P/CA* is coordinating a major effort to educate organizations and the public as to this situation, and to obtain this needed review on the scale recommended by the LCB's auditors, who are in agreement as to the problems we have with the ISRB.

Other issues brought up by Barbetta Ralphs, attorney, were the Murder 1 offenders not being allowed legal representation at resentencing hearings. Senator Nelson indicated the law would be changed to include legal representation at hearings (a little late). Also, attorney Ralphs inquired into state offenders being housed in federal prisons. Nelson stated he didn't think this was true, but later responded by letter. We presently have 65 Washington prisoners held in institutions outside of the state. These are disbursed among 28 states and several federal prisons. There are 60 prisoners who come from other states presently being held in within Washington institutions. There are seven Washington state offenders being held in federal facilities, and only two federal prisoners presently in Washington state facilities.

On Sunday, March 17, 1991, members of the *P/CA* met with Representative Brekke from the 32nd legislative district. Representative Brekke and her assistant Charles Lair have offered their help and assistance regarding our concerns.

Finally, the rough draft of the bill we are proposing in the Initiative is completed and is going through final scrutiny.

The progress of the *Prison/Community Alliance*, and further developments with respect to the Initiative and other issues, will be reported in the PLN on a regular basis. We urge you to keep reading and supporting the PLN, and to continue spreading the word to as many others as possible. Remember, what happens to any one of us (whether SRA or pre-SRA) can happen to any of the rest of us. We all need to be concerned with and support one another's legitimate efforts.

Editorial Comments

By Ed Mead

The main production run of the *Prisoners' Legal News* is a mere 300 copies. The printing and mailing costs for last issue was a very low $173 ($63 for printing, $85 for postage, and $25 for various other expenses like phone calls and photocopying). Last month we collected just $59 in donations from readers.

The *PLN* is published by me and another prisoner (Paul). Our main source of income is our prison jobs. I put in a lot of hours so average about $45 a month in wages; Paul earns less. We volunteer our time (as do our outside supporters) and pay our own money to get this newsletter to you each month. Most months the amount we have to pay is very small, or even nothing, because of your donations. But at other times, like now, the amount is quite large.

Today we are again in need of your financial assistance. If you like what we are doing, if you think we can have a positive impact on existing realities, then say it with dollars. If you can't afford to give something, then have a friend or family member make the donation for you. Send contributions of stamps and money to our Florida address (listed in the box on page two). Be there for us, so we can be here for you - every month.

In every issue of the paper we try to print as many letters from readers as we can make the space for. Sometimes the contents of a particular letter will raise the ire of some prisoncrat, perhaps more so than anything else in the rest of the paper. So let me take this opportunity to remind them, and anyone else who may have been upset by the contents of a letter printed in the *PLN*, that our letters section is not unlike the "letters to the editor" section of any other paper. It may contain subjective facts or opinions that do not coincide with your particular brand of reality. You should treat the information you read there accordingly. If it is controversial, that's good. Controversy leads to struggle, and from struggle flows progress. Let's keep those letters coming in!

The work being done to launch the anti-parole board initiative campaign continues to grind on. The draft of our proposed new law is done. It came out to 32 double-spaced pages in length, and wound up being an implementation of the "determinate model," which turns the functions and duties of the board over to the courts. The *Prison/Community Alliance (P/CA)* is now in the process of obtaining a sample "name" for the new law from the appropriate state agency. We will not have this law fully modified or the initiative petitions printed up for some time. There is no rush since we are seeking a spot on the 1992 ballot. For now it is important for Washington state readers to know that *P/CA* continues to work on this, and that the *PLN* will keep you informed as the process unfolds. We will be needing your help when it comes time to get this project off the ground. More on this subject next month.

Some of our outside readers may feel we spend too much time and space on this state's parole board. There are a number of reasons for our doing so, not the least of which is a legitimate justice issue created by the dual sentencing system in this area. But in addition to that, the board represents a focal point for a much needed philosophical debate around the question of crime and punishment. So far the public has been exposed to only one side of the issue, the version spoon fed to them by the bourgeois media. Accordingly, they are not able to intelligently exercise their democratic rights, a process that requires an informed decision. We are seeking to bring the debate to the citizens of this state (in our own small way), and in doing so we use the parole board as a vehicle for demonstrating the wrongness of the status quo. You can help to expand the process by sharing our messages with other concerned people, both inside and out of prison.

That's all for now, dear readers. Enjoy this issue of the *PLN*. Be sure to pass it on so others can read it, too. And remember to send us some stamps or money.

If not now, when?
If not you, who?

War Repression

By Laura Whitehorn

Revolutionary greetings. Like all progressive people, I've been trying to get news (news, not military advertisements) of the war, and following the anti-war activities around the country that somehow fail to make it onto the TV news. Here at FCI Lexington, you will be pleased to know, the administration feels proud to be able to be a part of the imperialist war effort: Unicor (federal prison industries) produces military cable. Unlike the scene I left in D.C. Jail, very few of the guards here have friends, family or are themselves deployed to the Persian Gulf.

Patriotic fever has also hit this place. The following is a true story.

On Tuesday, February 26, four of us prisoners were watching the TV news and discussing the war. A guard came into the TV room and made a few comments, too. When I expressed the opinion that the Iraqui invasion of Kuwait was really no different from the U.S. invasion of Panama, or of Grenada, or on and on, he was shocked. He'd clearly never heard such traitorous thoughts before. In all seriousness, he turned to me and asked if I was from this country, or from someplace like "Russia." Another BOP functionary ("counselor") came in and also offered his opinions: he thought the U.S. should "nuke 'em all and get it over with." He then informed the gathered

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War Repression *continued from page 4*

few that we were very lucky to live in this great country where you have freedom of speech, and where a poor boy like him could rise to the great success he's achieved in his life. The prisoners then pointed out that his being a white man had just a little to do with his ability to reach his lofty goals in life. A calm and very interesting discussion of what it is like to grow up as an African American woman in the U.S. then followed.

Two hours later, I was summoned to the Unit office (where the BOP hirelings gather to eat and gossip about us). There, I was sternly lectured for 15 minutes by two counselors, one guard, and a unit secretary. I was told that they had considered sending me to seg (the hole) for inciting to riot, but had decided to issue me a warning instead. IF I EVER again try to "rile up the girls(!)" and voice my "off the wall" opinions about U.S. government policy, I will be sent to seg. Ah, I sighed, how quickly freedom of speech becomes a thing of the past. What was it that same counselor had been saying about the freedoms in this country not two hours ago? At that point, the other counselor took over and said, "Look. There are three things you don't discuss in prison. Sex, religion and politics. For instance, if you are gay, you don't try to win others over to your way." Hmmm... Then she did a dramatic (I do mean DRAMATIC) reading of my charges, and informed me that "some people" think that I should be in seg just because of my charges. (I am one of the Resistance Conspiracy 6, serving 20 years for 'conspiracy' to resist the U.S. government and its domestic and international 'policies' such as racism and the denial of the right of oppressed nations to self-determination. Our 'conspiracy' included the bombing of the U.S. Capitol building following the U.S. invasion of Grenada and shelling of Beirut in 1983.)

I humbly requested that, if FCI Lexington is still unable to deal with political prisoners (remember, this is the home of the High Security Unit, now closed), then please send me to an institution that can. Pipe dreams. There is no such institution in the BOP because there are no political prisoners in the BOP. I don't know why I keep forgetting that.

The 'interview' ended with a repeat of the warning on their part, and an added warning that I am not to speak in 'interviews' like this one, but just to listen. I commented that I would certainly not stop voicing my opinions on politics and social issues. Once again, a non-meeting of the minds.

I send my love to all of you out in the streets that were trying to resist this vicious and unjust war. Those of us on the inside will continue making our opinions known, as you have done out there. And I guess all of us need to keep on fighting against the suppression and attempts to silence all our voices. Resistance is not a crime.

Laura Whitehorn, #22432-037
FCI Lexington, BG
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Lexington, KY40511

News From Dwight Womens' Prison

By L.F.

Geraldine Smith is only the third woman to be sentenced to death in the history of the State of Illinois... the first occurring in the 1800s and the second in the 1930s. There was almost **no** media coverage of Ms. Smith's sentencing. There was a small article in a local newspaper; all other coverage was on Spanish-speaking television and radio.

Dwight "Correctional Center" is absolutely not equipped to imprison women sentenced to die. There is no Death Row; thus, Ms. Smith is simply locked in segregation, but is segregated from the others in segregation. No one is allowed to speak to her. Because she is a "novelty" in the institution, the officers do not mistreat her... they are more curious than anything. But why the media blackout? And why Geraldine Smith? So many women are here after murder convictions, murders that they committed with there very own hands. Ms. Smith is convicted of hiring a man to murder the wife of her lover (and her child's father). The man who actually committed the murder received "natural life in prison." If women who have murdered three or four people with their own hands have not been sentenced to death, why is Ms. Smith so sentenced? Perhaps this is not the most logical argument as to why she should receive a new sentencing hearing, but I just can't keep from feeling that she is being used as an "example" of sorts, and I don't understand why the media isn't interested in her. As is probably needless to say, she is African-American, and she is the 42-year-old mother of a seven-year old.

On other subjects, sexism is exhibited here mainly by treating the women like children, in ways that they'd never treat men. The warden is a woman, but in the institution there is no female "touch" at all. Most of the female employees here are butch lesbians doing a very poor job of imitating a poor excuse for a man. In turn, a lot of the inmates here begin to act the same way, and the result is that the so-called "studs" are those to whom the administration most relates. It's sad. This place is dangerous to a human beings' mental health.

Racism is exhibited in the typical ways... little or no punishment if you're white and segregation if you're non-white for the same "offense." Among the inmates there's little overt racial tension, and there are many inter-racial "couples." The women are basically passive about everything, and tensions – when they boil to surface – manifest in actions against one's own self... attempted suicides. etc.

Local Deities, A Book Review

By Ed Mead

I've just finished reading a very good novel. And because the experience was so enjoyable, I would like to share a taste of it in the hopes that you, too, will read this book. The novel is *Local Deities*, written by

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Local Deities *continued from page 5*

Agnes Bushell and published in 1990 by Curbstone Press (321 Jackson St., Willimantic, CT 06226). While the paperback version lists for $11.95, I ordered my copy through the state library system for free.

Local Deities first came to my attention some six months ago, when reading an article in the radical press in which both the author and Ray Levasseur claimed that the book was not about Ray or the underground revolutionary organization he was a part of at the time of his arrest. I decided I'd read the book and form my own opinion.

I had some long talks with Ray and several of his co-defendants about 18 months ago, when I was back East testifying for them at the Ohio-7 conspiracy trial. I read much of the literature produced during the period and listened to their histories in some detail. There is no question in my mind but what *Local Deities* is in part based upon the people and armed actions leading to the trial that is the real basis for the book.

I would not be recommending this novel to you if it was just another trial story, or one of the predictable arguments for or against revolution, or if it was about political heros ("live like him"). Rather, it is a story about love and friendship, about doubt and hope. And while it is written against the familiar backdrop of the ongoing conflict between good and evil, right and wrong, justice and injustice, there is no hint of a conclusion or political message. Those are for the reader to draw. What does come through, and comes through in a way that caused me, at various times, to both laugh and cry, is the warm insights into the dynamics of friendship, and the power of love.

Politically correct this book is not. The story unfolds through the eyes of two women, early identifiers with feminist principles (1972), both close friends. One is married to a man who becomes an attorney, the other falls in love with a revolutionary and goes off with him to initiate the armed struggle. Each subsequently has children, one family above ground with all the trappings associated with being the wife of a busy attorney who serves the poor; the other family raising their children underground, while on the FBI's ten most wanted list. Some ten years after the two friends separate, the revolutionary husband (along with his three children) is caught, while his wife remains underground. The lawyer agrees to represent his old friend (the revolutionary), a defense committee is formed, and old friendships are re-established on new levels and take on different forms. New questions come to the surface, such as the welfare of the children – who they are and how they are impacted by 10 years of living an underground life.

If you are at all interested in radical politics, criminal law, and the personal and sexual relationships of the people involved in them, then read this book. But don't expect political enlightenment.

"Rehabilitation" Hoax Unveiled At ISRB Meeting

By Dan Pens

Any good confidence-artist can tell you that flawless teamwork is needed to pull off a complicated sting. If the players don't keep their stories straight the "marks" might catch 'em in a contradiction and expose them for the liars and cheats they are.

Maybe somebody should share this lesson with the prisoncrats at the Department of Corrections (DOC) headquarters and the Indeterminate Sentence Review Board (ISRB). It would seem that a recent administrative snafu at DOC headquarters has exposed the arbitrary and capricious nature of the "Indiscriminate" Sentencing Review Board's parole release decisions.

The following is quoted from the February 11, 1991 ISRB meeting minutes:

> "Regarding civil commitment procedures... The various institutions refer individuals to DOC Headquarters who they think should be referred for civil commitment. In one instance, a case was referred which the Board had approved for parole. There have even been a number of conversations about the issue following that event. It was never intended that the Board be in a position of having DOC 'second guess' or review its parole decisions."

If more "slip-ups" like this are brought to light, the public might get wise to the hoax being perpetrated by the Board's "rehabilitation" shell game. Incidents like this only prove the highly subjective and arbitrary nature of parole release (and civil commitment) decisions. Inmates and their families have long been aware of the "rehabilitation" hoax. It's high time that the taxpaying public wake up to the fact that while their eyes are being dazzled by the Board's slight of hand, their pockets are being picked for more taxes to keep the game going.

The Black Panthers Are Back

By Paul Wright

The Black Panther Party (BPP) was originally formed in 1966 by Huey Newton and Bobby Seale. It's goal was to organize and serve the black community in the U.S., sometimes called the survival programs. This included breakfast programs for children, free clothing programs, busing to prisons, free food program and defending members of the community from police brutality and attacks.

The rise of the BPP coincided with the growth of the anti-war movement and a growing radicalization of the student movement. It also saw one of the largest domestic repression programs (called COINTELPRO or Counter-Intelligence Program) aimed at disrupting and destroying the BPP. COINTELPRO encompassed everything from anonymous letters and phone calls to create and build splits and differences within the BPP

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Rehabilitation Hoax *continued from page 6*

to outright murder of party members. BPP members were also subjected to long drawn out legal and court battles that even when they resulted in acquittals had achieved the goal of tying up members in the court proceedings and drained scarce resources to pay for legal fees. Many BPP members are still in prison today some 20 years later, making them the longest held black political prisoners outside of South Africa.

The BPP dissolved in 1982. Now, the first issue of *"The Black Panther,"* published by the Black Community News Service is out. It's dated February 1991, and is dedicated to those who have given their lives for the cause of African Amerikan liberation as well as to those who are still imprisoned because of their political activities with the BPP.

Their goal is to address the critical issues facing the black community today which is being destroyed by drugs, unemployment, poor and inadequate housing and education, police terrorism and institutionalized racism.

The BPP now has or is forming branches across the country. For more information or a copy of the *Black Panther* write to: Black Panther Newspaper Committee, P.O. Box 519, Berkeley, CA 94701-0519. A one year subscription to the paper costs $10.00.

Update Of Canadian Women Prisoners

By Paul Wright

In our last issue of *PLN* (See "Oppression and Resistance at Canada's Prison for Women" page 7) we reported on events at the Prison for Women (P4W) in Kingston, Ontario, in which some 20 women prisoners had refused to lock up in their cells after in protest of abysmal prison conditions that have led to the suicides of five native prisoners in 18 months.

On March 4, 1991, the women prisoners who had been placed in segregation began a no food and water hungerstrike unless one of the prisoners in segregation was given a furlough to visit her mother who is dying of cancer and that a commission of inquiry be established to examine conditions at P4W and the effects of the criminal justice system on womens lives. By independent the women mean independent of the prison system and the solicitor general.

On March 6, 1991, the prisoners called off the hungerstrike after the warden granted a furlough so the prisoner could visit her mother and due to the hospitalization of several prisoners. March 7, 1991, saw the attempted suicide of yet another prisoner.

The women prisoners' mail is being censored and they aren't allowed contact with supporters, Native elders, etc. They still seek an independent commission of inquiry to be established and that the Native programs and visits with Native elders be reinstated immediately.

Letters of protest to support the prisoners can be sent to: Pierre Cadieux, Solicitor General's Office, House of Commons, 452 Confederation Building, Ottawa, Canada, K1A 0A6, Canada.

For more information on the prisoners struggle at P4W or on women in prison, write: Wimmin's Prisoners Survival Network, P.O. Box 770, Stn. P, Toronto, Ont. M5S 2Z1, Canada; and/or Through The Wire, 472 Albert St., Kingston, Ont. K7L 3W3, Canada.

DOC "Taxes" Oklahoma Prisoners

By Jeff Lea

This year state lawmakers determined that Oklahoma taxpayers were paying too much state sales tax and would continue to do so in the future. Accordingly, they passed a bill allowing the tax agency to refund $20.00 this year and $40.00 each year after this, to each and every Oklahoma resident. It was soon realized that prisoners would also want their money...the lawmakers stated there was no provision in the bill stopping payment to incarcerated persons. It was determined that to stop "us" from getting the money, action would have to be taken that would come into effect at the time they refund 1991 overpayments.

Inmates began to file for their refund and began to receive same. The DOC decided they didn't like it. Without a law or written departmental policy, they began freezing the $20 checks as they came in! Anyone that had already spent the money on canteen had their account tapped for the money. If you didn't have $20, they took the money as your family sent it in or they took it from the "gang pay" they pay each month for working for the DOC. This averages out to $7 to $12 for each month of work. Of this amount, 20% is withheld and put into a mandatory savings account that was established by law to ensure that upon release each person has at least $50.00. Any amount less than $50 and the DOC must pay to bring the total to $50.

It has been noted, and we the population feel, but have **not proven**, that DOC makes money off the interest of this money. We receive no interest.

At this time the money is still being withheld from us. DOC is attempting to find a way to force us to put it in our mandatory savings account, thereby reducing their assumed contingent liabilities OR, find a way to make us give it back to the state.

I feel this is unfair as we pay sales tax on everything we purchase on the outside such as clothing, craft supplies, and educational materials for college. We also feel the high prices on the canteen reflect a certain amount figured into account for sales tax. This action would bring forth a question if we are not entitled to refunds due to overpayments in sales tax should we be exempt from paying sales tax to start with? This is like taking our federal and state tax refund money. This is money we were told we have to pay, then they found we had paid too much. In effect, we overpaid a bill and the DOC wants to pocket the difference!

The tax form you fill out allows for each dependent you claim, this includes children. It does not require each person to be an income tax payer. The dependent

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Oklahoma Prisons *continued from page 7*

amount is then multiplied times $20 to determine the amount the filer will receive.

Is there anyone out there that can advise us on this problem? If so, please contact: Jeffrey Lea #181231, P.O. Box 260, Lexington, OK 73051.

Why Do We Still Have A Parole Board?

By Ed Mead

Most of us on the inside know that parole supervision of released prisoners is both ineffective and a waste of taxpayers' money. Many of us have also experienced, in one way of another, the board's arbitrary and capricious decision-making process. Indeed, we have an article in this very issue of *PLN* in which the board ordered a guy paroled a "rehabilitated" inmate while, at the same time, the Department of Corrections was referring him for civil commitment under the new dangerous sex offender law! And finally, we each know the emotional torture suffered under the indeterminate sentencing system. As one prisoners recently put it: "No matter what the other injustices and illegalities of the dual sentencing system are, surely this one aspect – the never knowing when you'll be released – is the cruelest and most insidious of all."

Every pre-SRA prisoner would like to be able to point to a date and confidently say, "Here, this year I'll be going home." An associate editor of *PLN* has a case like that of many others. He is serving his sixteenth year of a first degree assault conviction. Nobody was physically injured in the commission of this crime, and it was his first arrest for a violent offense. Yet, because of the indiscriminate power bestowed upon the board in making its release decisions, he has no clear idea of when he will be released. This is despite the fact that the average term of confinement in this state for a first degree assault is less than five years. Part of the problem (in very large part) is that prisoners who display a sense of dignity and self-respect in their dealings with the system tend to contradict the board's image of its own omnipotence and self-righteousness. Prisoners who are manipulative and dishonest, who tell their captors whatever they want to hear, ("Coming to prison was the best thing that ever happened to me" or "you know what's best for me" etc.) are the ones who earn the brass ring of limited freedom. They're "rehabilitated."

The rehabilitation sham is continued because of the failure of the legislature to abolish or modify Washington state law RCW 9.95.100, which mandates that the parole board cannot release an offender prior to the expiration of his maximum term "unless rehabilitation has been complete..." Nowhere is the term "rehabilitation" defined, or any indication given as to how this elusive ideal can be measured. What is clear, though, is that in some hundred years of parole experience, the rehabilitative ideal has proven to be unworkable. Standards of rehabilitation and predictions of future dangerousness require determinations which are impossible to make with present or foreseeable methods.

Perhaps recognizing the inherent disadvantages in the parole system, or, more likely, being caught up in the latest "designer law" fad, the Washington state legislature passed the Sentencing Reform Act (SRA) of 1981. The SRA implemented determinate sentencing for all, and fixed a date for abolishing the parole board. Things would have been fine had the legislature held its ground and the courts forced the parole board to follow the new sentencing law. But that was evidently too much to expect from lawmakers. Their continuous tinkering with the SRA provided a cheap substitute for decisive political action, and it did so with minimal risk of provoking organized opposition.

Exposure To Secondary Smoke Found Unlawful

The federal 9th Circuit Court of Appeals has ruled that exposing prisoners to ETS (Environmental Tobacco Smoke) violates the 8th amendments right for prisoners to be free from cruel and unusual punishment. The Court has decided that under societies "evolving standards" of decency (evidenced by the fact that so many states, cities, etc. have passed laws banning or regulating smoke where others may be exposed to ETS) exposing prisoners to known carcinogens (materials that cause cancer) is "cruel and unusual" punishment.

The case involves a Nevada state prisoner who was involuntarily exposed to ETS when he was celled with a prisoner who smoked five pack of cigarettes a day and prison officials refused to give him a single cell or a non-smoking cellmate. It held: "If housing non-smokers and smokers in other parts of the prison cell or allowing unrestricted smoking on other parts of the prison exposes non-smoking inmates to a level of ETS that poses an unreasonable risk to their health the 8th amendment is violated."

The Court ruled that prison officials were immune from damages on the basis of qualified immunity but that the prisoners still had a cause of action for injunctive relief.

The Court also found that Nevada's anti-smoking statute applied to state prison law libraries.

It also held that district courts have the discretion to appoint expert witnesses in cases involving indigent plaintiffs.

See: *McKinney vs. Anderson*, 924 F.2d 1500 (9th Cir. 1991).

– Letters From Readers –

Letters from our readers are encouraged. Names of writers will not be published unless specific authorization is given to do so. We welcome the input of every reader. Here are some letters recently sent to *PLN*.

Excerpt From A Letter Home

"I get so balled-up inside...confused...utterly dazed when I think about if/when if/when if/when I'll ever come home. When! If only I could point to a **year** and be certain. If I could say, "Here! This year I'll be going home!" it would ease my mind.

"No matter what the other injustices and illegalities of the dual sentencing system are, surely this one aspect – the never knowing **when** – is the cruelest and most insidious of all."

D.P., Monroe, WA

Sex Offender Debate

February issue, Vol. 2, No. 2, was excellent. The Parole Board Audit report was extensively researched and a well planned assault. In typical Ed Mead fashion he drove to the heart of the matter with relentless skill. I am glad to see the inclusion of the monetary impact such public safety type scare tactics can bring to a department that struggles, under new leadership, to "streamline" itself. The political realities are adequate because support is based on ancient loyalties and ignorance, not expedience or necessity. You may find support where you least expect it.

I missed "Tread Carefully" but caught Paul Wright's response. The issue of sex offenses has always plagued lawmakers as it falls between health and criminal issues. A gray area that nobody wants to touch. It is easy, I have noticed, to say this should not be done and that should not be done (in support of Mark LaRue but not to oppose Paul Wright). What should be done is always under attack and those adventurous souls who put forth an apparent solution must be prepared for that. There is no solution (short of removing the sex drive and that, in all civility would be too rude). They are simply taken out of circulation after a reported offense and returned later so that it appears something has been done. The offender is then more afraid, more confused and certainly more cautious. Nobody should be monitored, nobody should be registered and nobody should be molested. Who will venture forth the next solution?

Doyle D. Turner, Lompoc, California
United States Penitentiary

Medical Care Chilling At Purdy

The Clinic had me pretty stressed out the last couple of days. My arm, where the stitches were, are starting to form blisters, and to me that is not normal. My belief is that it should be healing – not blistering – and I've never known blistering to be part of the healing process. Anyway, Tuesday night I had staff call the clinic and the clinic's response was that I come up at 4:30 in the morning sick call, and of course I said no – at 4:30 in the morning – all they do is excuse you from programming until someone else can see you. I didn't want an excuse from work – I wanted someone to take a look at my arm! I grieved it that night, but grievances here carry very little weight. It's just something to pacify us and make us think something will change. The next morning I had staff to call again – they were too busy – she logged it in – so I put in a medical slip and still no one has taken a look yet – and I'm about ready to act real ugly. My neighbor had a tooth growing under her gums. The dentist did surgery on her mouth – her thinking he only pulled the tooth – nothing more – after a couple of days of excruciating pain and swelling she find's out that the dentist had to break her jaw to get the tooth out – didn't wire her mouth or anything – just let her think it was nothing. For me – something has to be seriously wrong for me to even mess with them, and there are only two nurses here that I will even let touch me... The doctor – she's great! But the rest of them – they're just getting paid to sit on the flat side of their bodies and drink coffee.

T.E.L., Purdy, WA

Pig Park

The sign shop is making a sign that reads: "State of Washington Employee Park. Visitors and Family must be accompanied by an employee of the Washington State Penitentiary or the law enforcement community.

Last year, I believe it was, the 40 acre state Game Farm was either sold or given to the penitentiary.

If this is true, I don't see how the guards can have a private park at taxpayers expense.

I've sort of asked about it, but no one says anything about it. I don't talk much to the guards.

Maybe you all can have this matter looked into and a stop put to a private park for these pigs if the land they are using is the above.

R.N., Walla Walla, WA

Analysis First Rate

I was dismayed to hear you were thrown into the hole as an act of retroactive censorship (and their way of foreshadowing punitive actions that could be taken in the future) because you are audacious enough to speak the truth. Cliche as it is, I must say, "MORE POWER TO YOU." Without people like you, inmates like the man whose arm was broken would be in a lot worse shape: It wasn't so long ago that they shackled us to stone walls in rat infested dungeons. (Or was that today? I get so confushed sometimes by all the advancements in modern penal technology.)

Vol. 2, No. 3 of PLN was the best issue I've read so far. The analysis of Washington State's Sex Offender Treatment Programs recidivism statistics by Dan Pens was first rate work. This whole issue of PLN was first rate. Thanks for putting PLN together again and again despite threats of disciplinary action should you speak too freely or humanely.

J.B., King County Jail

Penitentiary Overcrowded

The *Seattle Times* reports that the Washington State Penitentiary (WSP) at Walla Walla now has 1,970 prisoners and is expected to house about 2,600 by this summer. This is a record of overcrowding at a prison long characterized for it's overcrowding.

Remodeling is now taking place for it to house 1,936 prisoners (which sounds like closing the barn door after the cows have left). Most cells are now filled by four prisoners that were originally intended for two.

The Prison/Community Alliance (P/CA) is a group of Washington state prisoners and concerned citizens whose goal is to abolish the Washington state Indeterminate Sentence Review Board, AKA the parole board, and bring all indeterminate sentence prisoners under the new SRA guidelines. The courts and the legislature are unwilling to abolish the parole board, so the way the P/CA is focusing on doing this is the ballot initiative, to let the voters of the State of Washington decide whether or not they want the parole board.

P/CA does not need money, they need people willing to get involved and make their voices heard. PLN will cover new developments as they occur. To get involved or for more information please contact: P/CA, P.O. Box 276, Kent, WA 98035.

Prisoners' Legal News
P.O. Box 1684
Lake Worth, FL 33460

Prisoners' Legal News

Working to Extend Democracy to All

Vol. 2, No. 6 June 1991

Civil Commitment Law Roasted On ABC's *Nightline*

By Dan Pens

I had gotten word through the grape vine that Nightline was going to do a show on the Washington civil commitment law. So I stayed up several nights in a row to check it out. The plight of the Kurdish refugees seemed to be the dominant story all week long. Then, on Friday night, April 26th, the roving spotlight of Nightline focused its beam on Washington's civil commitment (witch trial) proceedings.

The first ten minutes of the show was a filmed background report. It was a fairly typical TV news report... long on visual images and soundbites, short on fact or substance. There were clips of the victim's lobby talking about the need to lock up the sex-fiend monsters. They showed footage of one such miserable creature being dragged away from his civil commitment "trial." Governor Gardner was shown signing the law and proselytizing about the need to protect innocent victims. The TV reporter did his commentary while standing in front of a fence bristling with razor-wire. What news story about prison would be complete without the bristling razor-wire shot? In short, the background report was about what you'd expect from the bourgeois media.

After the commercial break Forrest Sawyer introduced the live guests for the debate portion of the program. He had three guests: King County's District Attorney, Norm Maleng; A law professor; and a clinical psychiatrist, both from Washington state. At first it appeared that Mr. Maleng was going to win the day. He was the smoothest talker, and seemed to have his lines down pretty good. Forrest Sawyer of ABC apparently did his homework, though. He and the two other guests brought up the most salient points of the law, which are summarized as follows:

1.) The Civil Commitment law waits until after an offender has fully completed his prison term, and **then**, when he's about to be released he suddenly needs "treatment."

2.) The terms "sexual predator," "personality disorder," and "mental abnormality" which are used in the law to define persons eligible for indefinite confinement are vague, ambiguous, and have virtually no valid legal or clinical meaning whatsoever.

3.) Current civil commitment laws require the state to show proof of **recent** dangerous behavior on the part of the person who is being committed. The sexual predator law only requires the state to prove the person may be "likely" to be dangerous in the future.

4.) It's absolutely impossible to predict whether an individual is going to reoffend. Period. The Washington Psychiatric Association and the American Psychiatric Association have both asserted that it's beyond their scientific capability to make such a determination. How, then, can a jury of twelve lay-persons make such a determination?

5.) Under the current climate of public hysteria about crime, and sex-crimes in particular, its ridiculous to assume that a jury could make a reasonable or informed decision at a civil commitment hearing. It's almost inconceivable that a jury would take the responsibility of determining a sex-offender to be not dangerous. It's highly probable that any jury would assume that if the state thinks the man is dangerous enough to bring to the hearing, then he must be a "sexual predator."

6.) The civil commitment law is paralyzing the voluntary sex-offender treatment programs offered in the prison. Inmates are informed that anything they say to their therapist can later be used against them in a civil commitment hearing. (See "Sex Offender 'Treatment' in Washington State," *PLN*, March 1991) This has the effect of clamming-up the inmates and severely undermining the treatment process.

Forrest Sawyer put the burner under Mr. Maleng, repeatedly badgering him and cutting off his answers. By the end of the show Mr. Maleng, and his civil commitment law, were pretty well roasted. The last word was left to the clinical psychiatrist. Mr. Sawyer asked him, "... if this law has any redeeming value whatsoever?" The doctor responded, "Uhh.. well, in a word, no."

It appears the civil commitment law may be overturned by the courts on Constitutional grounds. The ACLU wrote a superb *amicus* brief which exposes the law for the farce it is. Prisoners need to continue their efforts to organize and get the word out, though. The possibility remains: this type of preventative detention – if it works for sex offenders – might soon be expanded to include other types of violent crimes, too.

Court Upholds Collection Of Blood Samples For DNA Data Bank

A federal court has affirmed a Virginia policy of collecting DNA samples from incarcerated felons, saying the practice does not violate the inmates' right to privacy or constitute unreasonable search of seizure. The ruling is believed to be the first in the nation in a case challenging a state's mandatory collection of DNA samples.

Virginia last summer began taking blood samples from all inmates convicted of felonies, intended to establish a DNA criminal data bank, similar to the FBI's fingerprint files. At least 10 other states have similar laws, but most call for collection of DNA samples only from certain categories of offenders, mainly sex offenders.

U.S. District Judge James C. Turk ruled March 4 that the state has a "special law enforcement need" for the DNA samples, citing high recidivism rates among felons. (The higher the recidivism rate, the more likely DNA taken from a blood stain or other evidence at a crime scene would turn up a "match" from a DNA data bank of former prison inmates.) A computerized data bank with DNA profiles of offenders could deter crimes or help in the capture of suspects, Judge Turk said.

The judge ruled that the DNA testing does not violate inmate's privacy-because the intrusion of taking a blood sample is a minor one, and because the state law bars use of the samples for anything other than determining identification characteristics. "Prisoners, incident to their status as convicted felons, relinquish some expectation of privacy," he wrote. "For example, prisoners are required to submit to searches of their cellblocks, body-cavity searches and health tests."

Virginia Attorney General Mary Sue Terry praised the ruling, saying, "This is good news for law enforcement in Virginia. DNA is probably the most important crime-fighting tool since fingerprints." But Harold Kent, a University of Virginia professor of law who helped file the lawsuit on behalf of inmates, said the ruling "almost certainly" will be appealed.

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If you have not made a donation of stamps or money to PLN, please do so now. Send such contributions to Prisoners' Legal News, P.O. Box 1684, Lake Worth, Florida 33460. Mail your submissions of articles, artwork, etc. to either:

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Mail To Public Officials And Media Protected

The New Jersey Department of Corrections had a regulation that prevented them from opening outgoing "legal correspondence," but allowed prison officials to open, read, and censor mail being sent to public officials, government agencies and media representatives. Prisoners challenged the rule in state courts, arguing that such mail should be treated as privileged "legal correspondence."

The New Jersey Supreme Court agreed with the prisoners. While such mail could contain dangerous material such as escape plans, plans relating to ongoing criminal activity and threats of blackmail or extortion, the court went on to hold "that threat is minimal when we consider the proposed audience: legitimate public officials, government agencies, and members of the media."

Against such "minimal security risks," the court concluded, "rests the significant free speech rights of inmates" to communicate personal grievances concerning the institution, conditions of confinement and unlawful activity. The court therefore ordered that the rules on outgoing mail be amended to treat mail to those recipients from inmates as privileged mail. In re Rules Regarding Inmate Mail, 120 N.J. 137, 576 A.2d 274 (1990).

[**Editor's Note**: *Washington's Administrative Code (WAC), section 137-48, defines outgoing mail to the courts, attorneys, legal aid groups and public officials as "legal mail," but the definition does not include letters written to the new media in this category.*]

Which Shell Is The Pea Under?

Government Crime Statistics Invoke Slight Of Hand

The U.S. Justice Department claims a "definite and positive" link between locking people up and violent crime rates in the United States. As more offenders go to prison, the argument goes, violent crime decreases.

It seems there was a 17% decrease in the nation's imprisonment rate during the 1960s, but in the 1970 and 1980s the imprisonment rate increased by 39% and 99%, respectively. Conversely, the Justice Department argues, there was a 100% increase in violent crime in the 1960s, but decreases in the growth rate during the next two decades – down 47% in the 1970s and down 11% in the '80s. Thus, it is contended, the large increase in prison populations during the '70s and '80s worked to lower the rate of increase in violent crime. The conclusion, of course, being the need to continue prison expansion.

Bolstered by such sound logic, the current administration has made the building of more prisons a key part of its anti-crime program. The Department of Justice's 1992 budget allocates $2,159,640,000 to the federal prison system, and 24.4% increase over 1991. The federal prison population was about 25,000 in 1981, is about 60,000 today, and by 1995 will be close to 100,000.

Female Guards Can Pat Search Male Prisoners

Prisoners at a Nebraska state all-male prison brought a civil rights lawsuit complaining that their constitutional right to privacy was violated by pat searches performed by female guards and by female guards observing them nude or partially nude while they showered, used toilet facilities, dressed and undressed, and slept. They also asserted that the provision of greater privacy protection to female inmates at Nebraska state prisons violated their right to equal protection.

The U.S. Court of Appeals for the Eighth Circuit rejected the claims. It held that allowing female guards to pat search male prisoners on the same basis as male guards was a reasonable practice as applied in the Nebraska state penitentiary and did not violate any privacy interest which prisoners retained. The pat searches were performed in a professional manner that did not include an instruction to deliberately search inmates' genital and anal areas, although incidental touching might take place. Any privacy rights retained by the inmates, the court held, were outbalanced by the internal security needs of the prison and the legitimate equal employment rights of female guards.

The court also said that treating male inmates differently than female prisoners as to privacy did not violate equal protection. Such prisoners were not "similarly situated," the court reasoned. There are differences in the number and age of inmates, the kinds of crimes committed by them, the length of sentences, and the frequency of incidents involving violence, escapes or contraband. These differences justify differences in the security measures taken as to male and female prisoners. *Timm v. Gunter*, 917 F.2d 1093 (8 Cir. 1990).

Prisoner Victims Of Guard Assault Win Damages

Ten prisoners in the D.C. jail learned they were being transferred to another facility. A number of the inmates passively resisted the transfer. They alleged that after the transfer, they were beaten by correctional officers. None of the inmates were placed in maximum security by the prison housing board on the basis of allegations that they assaulted the officers.

The inmates sued 15 guards and the District of Columbia for violation of civil rights. Among the misconduct asserted was the participation of several of the officers in the beatings and the non-intervention of other officers who observed the beatings. The inmates also complained that they were disciplined without written evidentiary findings and asserted that five of the inmates had not had any hearing at all.

A jury awarded the prisoners $29,000 in compensatory and $743,000 in punitive damages on eighth amendment claims arising out of the beatings. The officers and the District were found jointly liable for compensatory damages, with the punitive damages assessed against individual officers. Additionally, the housing board chairman was found liable by the jury for $500 in punitive damages to each of the five inmates denied a hearing before being placed in maximum security. *Covington v. District of Columbia*, U.S. Dist. Court No. 87-2658, Sept. 5, 1990, reported in 34 ATLA L. Rep. 10 (Feb. 1991).

Medical Care

A former federal prisoner with diabetes was awarded $500,000 for failure to prison medical staff to provide proper diagnosis and treatment of foot infection which let to below-the-knee amputation of his right leg. The prisoner brought suit against the U.S. pursuant to the Federal Tort Claims Act, 28 U.S.C. Sec. 1346(d), for alleged inadequate medical care. He was under treatment by the prison's medical staff for diabetes mellitus and developed a bacterial infection in his right foot. He claimed that the medical staff misdiagnosed and improperly treated his infection, leading to an advanced infection culminating in gangrene necessitating a below-the-knee amputation.

The inmate was 48 years old at the time of the amputation. He claims that the bacterial infection entered his foot through either an abrasion caused by the improperly fitted institutional boots he was required to wear or through a fissure caused by a fungal infection between his toes (athlete's foot) that was not detected by the medical staff because his feet were not properly examined to rule out infection.

The court found that the medical staff departed from basic standards of care owed to a diabetic prisoner in the diagnosis and treatment of a foot infection and failed to provide a his medical chart to the hospital to which the prisoner was transferred. While the plaintiff incurred no personal medical expenses and presented no proof of lost earnings or employment opportunities, the court awarded $5000,000 in damages for pain and suffering. *Williams v. United States*, 747 F.Supp. 967 (S.D.N.Y. 1990).

From The Editor

By Paul Wright

Welcome to another issue of *PLN*. As I write this I don't know how successful our plea for donations in the last *PLN* was. Hopefully everyone who hadn't donated yet was overcome with a spirit of generosity.

In an attempt to avoid having to ask for money each issue we are hoping to acquire institutional subscribers to *PLN*. From now on *PLN* will be available to institutions such as companies, agencies, libraries, law libraries, etc. for the low rate of $60.00 a year.

To do this we need help from our prison readers and those who are employed by agencies that have some input into what publications are subscribed to. If you like *PLN* and think others would benefit from reading it, take this issue of *PLN* to the librarian or person responsible for ordering subscriptions at that

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From The Editor *continued from page 3*

facility and encourage them to subscribe to *PLN* at our institutional rate.

This will accomplish two things. First, it will make *PLN* available to a wider body of readers than it is now, and secondly, if we can sell just 24 institutional subscriptions we can publish *PLN* at our current rate for a year with no additional income. Which means no more pleas for money for a whole year! But we need your support to be able to pull it of.

While I'm on the subject of donations, I would like to thank Larry Jantz (property officer), Robin Moses (correction program manager, retired) and Ronald Van Boening (associate superintendent) for their indirect donation of $80.00 to *PLN*. I recently won part of a lawsuit where the above gentlemen deprived me of some legal materials and books on Marxism. As part of the settlement the taxpayers of Washington State gave me $200.00 of which $80.00 have gone to *PLN*. That covered about half our costs for this issue.

In follow ups to other stories that we have covered in *PLN*, readers may recall my article in the February, 1991 issue of *PLN* concerning the brutalizing of CBCC prisoner Aaron Fast by a gang of eight white prison guards.

After I wrote that article Dan Pacholke, the captain at the prison, ordered me infracted for having written about the incident. I was found "guilty" of having "lied to staff" and sentenced to 20 days in the hole and 30 days loss of good time. Neal Brown, superintendent, dismissed the infraction on appeal stating that he would drop the infraction if I dropped the article. I didn't drop the article.

That issue of *PLN* was banned as being "inflammatory" at this prison and the warden on Feb. 1, 1991 threatened to put me in the hole for "disruptive" behavior.

"Seattle Times" columnist Rick Anderson did a story on the above censorship which appeared in the March 15, 1991 edition of the *"Seattle Times."* The warden's assistant, Paula Norris said she didn't know what had happened to Aaron but that whatever I said was false.

Mr. Anderson did another column on this on April 1, 1991, after having received numerous affidavits on Aaron's assault and on the censorship of *PLN*. He also reported on the racist discrimination against black prisoners at CBCC and the beating of CBCC prisoners Eddie Newman by Sgt. Delong and other white prison guards. The *"Seattle Times"* wasn't censored.

Since those articles appeared several citizens rights groups have distributed the affidavits of witnesses to the above and other prisoners beatings at CBCC to legislators and other elected officials. *"The Progressive"* in it's May 1991 issue has a short editorial on the subject as well.

I also received a letter from the Department of Justice informing me that they had received my complaint on Aaron's behalf and had asked the FBI to investigate the matter as a possible civil rights violation. *PLN* will keep readers posted on what happens with this investigation.

Last year in the May and June 1990 issues of *PLN* we reported the riot that occurred in CBCC's close custody unit after prisoner Terry Grant was beaten by prison guards. Several guards were themselves beaten when prisoners went to Terry's rescue and then F unit was seized and held for some four hours.

Three prisoners, Terry Grant, Bobby Lee and Robert Lindell were later charged with custodial assault. Terry and Robert are still awaiting disposition of their charges but Bobby Lee had his charges of having allegedly assaulted prison guards dismissed after the judge ruled the state had waited too long to press charges.

Enjoy this issue of *PLN*; and be sure to share it with friends and family.

Prisoner With AIDS Care Found Lacking

The national commission on AIDS has concluded a study of AIDS in prisons and jails with the finding that "the situation today for many prisoners living with [the AIDS] disease is nothing if not 'cruel and unusual.'"

After visiting prisons, holding a fact-finding hearing, and gathering other information, the 15-member findings commission said, "The finds were sobering and troubling.... Prisoners with HIV disease are often subject to automatic segregation from the rest of the prison community, despite the fact there is no public health basis for this practice. Lack of education of both inmates and staff creates fear and discrimination ... and unjust policies directed toward inmates living with HIV disease. Despite high rates of HIV infection [among prisoners] and an ideal opportunity for prevention and education efforts, former prisoners are re-entering their communities with little or no added knowledge about HIV disease and how to prevent it," the commission said.

The Commission, whose members were appointed by the President and Congress, recommended that the U.S. Public Health Service develop guidelines for treatment and prevention of HIV disease in all federal, state, and local correctional facilities. Adequate health care should include, at a minimum, access to HIV testing, regular examinations by physicians with sufficient training in AIDS-related diseases, T-cell monitoring at regular intervals, and "timely, consistent and appropriate access to necessary medications."

The 43 paged report is *HIV Disease in Correctional Facilities*, and includes a model policy on AIDS for prisons. It is available from the National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street NW, Suite 815, Washington, D.C. 20006.

Life Without Parole Okayed For 13-Year-Old Killer

On April 15 the U.S. Supreme Court refused to overturn a sentence of life in prison without the possibility of parole for a Washington state 13-year old boy convicted of murder. The state courts had held that the sentence did not violate the eighth amendment prohibition against cruel and unusual punishment.

The case involved Barry Massey, convicted of killing a Tacoma marina owner during a robbery. He was 13 at the time, and accompanied by a 15-year old with a criminal record who allegedly orchestrated the killing. Massey sufferers from a learning disability, had a third-grade reading level, and a borderline IQ of 77, and had never been in trouble with the law before his arrest on murder charges.

Massey's attorney wrote that: "One cannot know with any degree of reasonable probability that your of such tender age cannot be rehabilitated."

Mere "Institutional Security" Claim Not Enough

A former prisoner of the Nevada State Prison brought a federal civil rights complaint against guards claiming that his fourth, eighth and fourteenth amendment rights were violated. He contended the violation occurred when guards forced him to submit to a blood test, supposedly in connections with an AIDS test, by threatening to shoot him with "taser" guns.

The trial court dismissed the complaint and the prisoner appealed. The U.S. Court of Appeals for the Ninth Circuit reversed, holding that the guards offered "no evidence that the AIDS test, if such was the purpose of the blood sampling," was "reasonably related to legitimate penological interests."

The prisoner alleged that each inmate had been already screened for AIDS upon entering the prison, and that prison officials knew that no prisoners had AIDS at the time the samples were taken. The defendant prison officials did not contest these allegations. The prisoner also claimed that the blood samples were collected in order to help train medical personnel in the administering of AIDS tests.

"Without a further explanation [of the reasons for the test], general protestations of concern for the welfare of the citizens of Nevada and the prison community are simply insufficient to render the involuntary seizure of blood samples, even from prison inmates, constitutionally reasonable." The prisoner claimed that the samples were taken to train state health care workers and asserted that this was not a legitimate penological objective. This assertion, the court commented, "may well be correct." No matter how serious a disease, "unwilling prisoners may not be made mere guinea pigs for its study." *Walker v. Sumner*, 917 F.2d 382 (9 Cir. 1990).

Crime And Revolution Prisons Don't Work

Edited from MIM notes

According to the Bureau of Justice Statistics of the U.S. government, the United States is number one in the world – number one in imprisonment.

More people are in prison and jail in the United States than in any other country.

More than one million people incarcerated makes for 426 per 100,000 residents as of June 30, 1989. South Africa came in second with 333 and the Soviet Union came in third with 268.

In Europe the figures range from 35 to 120 per 100,000. Asian countries range from 21 to 140.

For Black males the figure is 3,109 in the United States and 729 for South Africa.

Since 1980 the nation has doubled its prison population, but overall crime fell 3.5 percent. Meanwhile, the United States spends $16 billion a year imprisoning people.

No this article is not from the twilight zone. The figures come from the U.S. government.

What comrades should learn from this is that once again the criminal justice system is not a solution to any problem. It can't stop crime. It's only bologna to say that putting people in prison deters them from committing crime.

It makes many middle-class people feel good to put people in prison, but it does not solve any problem.

Police Don't Work Either

The number of police that a city hires does not affect the crime rate. If a city hires more police than its neighboring city, it is not any less likely to have a higher crime rate than its neighbor.

Stated scientifically, there is no correlation between the number of police hired and the crime rate. Studies comparing different cities and studies of one city with different size police forces over time demonstrate that hiring police is not a solution to crime.

One might suspect that if there were no police or if everyone were a police officer it would make a difference. However, outside of these extremes it does not matter how many police there are. In the real world of the wide range of U.S. cities, it does not matter to the crime rate how many police officers there are.

Hiring more police, like building more prisons and locking more people up, will not solve the crime problem.

Death Penalty Does Not Work

Statistics on different countries show that having the death penalty does not prevent murder. In fact, the exact opposite is the case. Countries with the death penalty are significantly more likely to have higher murder rates than countries without the death penalty.

Individual states within the United States that institute the death penalty also do not see any reduction in their murder rates.

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Crime and Revolution *continued from page 5*

The same is true for instituting the death penalty for certain kinds of murder. For example, instituting the death the death penalty in New York for cop-killing did not lower the cop-killing rate.

One theory for this is that when governments institute capital punishment, go to war and tolerate corporate violence like pollution or starvation, the population picks up a message that violence is legitimate in many circumstances.

Another danger is that societies like the United States waste all their time debating tougher law enforcement, the death penalty and budgets for police when none of these things are effective in reducing crime. Other societies may do a better job addressing the real causes of crime and hence wipe out more crime at the roots.

Revolution

Amerikans have a very hard time thinking rationally about crime. Unlike other countries without a rugged individual frontier past with settlers on their own pieces of land, the United States in general has a strong belief in having people make it on their own.

Although the Euro-Americans committed genocide against Native-Americans to obtain farmland in the United States, the myth arose of the rugged frontierperson "making it" through hard work. That mythology carries forward in another way today in the United States: the United States has the largest middle class in the world. This class of people makes the United States even more individually minded than other capitalist countries in the world.

Crime is a political problem. It can not be solved by the current political system because politicians have to say and do what is popular with the middle class and upper class, the firm believers in blaming individuals for their lack of determination to work hard, uphold good morals ad nauseam. These middle and upper class people believe they have achieved their good position through their individual merits and hence criminals must be people without these merits who should be locked up.

Some people uphold the dogma that the working class in the imperialist countries like the United States are most advanced because they live in the most technically advanced societies. Yet it is the pervasive individualism of the U.S. working class that made it possible for George Bush to win his election merely by referring to a Black rapist in his political advertisements. Far from being advanced, the Amerikan working class falls prey to fascist anti-crime politics far more readily than most other working classes with the possible exception of the South African white working class.

In other societies the problem is not quite so bad, especially societies without a middle class of white workers who benefit from the plunder of the Third World. For more on this subject read J. Sakai's *Settlers: The Mythology of the White Proletariat* and H.W. Edwards's book *Labor Aristocracy: Mass Base For Social Democracy*. These books explain why white workers as a group on average enjoy a different relationship to the means of production than other working classes. It is the absence of a white proletariat that partly explains the attitudes of the U.S. public toward crime.

People who want to go on tolerating murder, rape, teenage suicide, wife-beating, drug-dealing, alcoholism and property crimes of the criminally deprived – such people should go on blabbering about more cops, prisons and death penalties. People who really want to "get tough" on crime should get tough with their analysis first. They should work against the causes of crime and all other oppression.

Reviews

World View is the quarterly publication of the Political Prisoners Rights Campaign. The spring 1991 issue is 16 8½x11 pages and contains articles on western military intervention in the USSR; a response to Amnesty International criticizing that organization for a pro US/UK bias (for example, A.I. has not criticized the British occupation of Northern Ireland with it's death squads, torture, lack of civil rights, etc.) and it's policy of not supporting political prisoners who have advocated the use of violence such as Nelson Mandela; there is an excellent article on the Basque independence struggle and an article on international law and political prisoners. This is highly recommended for anyone interested in political prisoners. For information write: Political Prisoners Rights Campaign, B.M. Box 2300, London WCIN 3XX, England

MIM Notes is the monthly journal of the Maoist International Movement. Each issue has at least one page devoted to prison struggle. MIM also has a listing of books on political and economic theory that are available to prisoners. Write: MIM Distributors, P.O. Box 3765, Ann Arbor, MI 48106.

Still Not The Hilton

From: Out Of Time 2/91

The Bureau of Prison's (BOP) 'mission' to isolate, hide and break the spirit of women political prisoners (a la Lexington High Security Unit, Lexington, KY 1986-88) continues at Federal Correctional Institute (FCI) Marianna in Florida. The tactics, environment, and locale have changed. The name of the game is still isolation; the goal is creating passive, idle women. Currently Silvia Baraldini, Marilyn Buck and Susan Rosenberg are incarcerated in this, the newest maximum security prison for women.

Marianna is a small, rural community in the Florida Panhandle. It is 75 miles from Tallahassee, quite a distance to major air transportation and there's no public bus service to the prison. Thus the expense to visit women inmates is great. The result is obvious: family and friends can't get there, little visiting takes place and the feelings of isolation are increased.

Internally the women are isolated from one

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Still Not The Hilton *continued from page 6*

another. Each cell has its own T.V. There's no large outdoor field so no team sports. Educational programs are via video cassettes. Women don't participate together in educational or cultural programs. No communal activities means no collective sense and no community identity.

The BOP wants passive inmates. They are creating an environment where boredom and idleness reign. Nearly one-third of the women are on tranquilizers; lithium, dilatin, etc. Drugs and passivity. There are not enough jobs and the women at Marianna don't **have** to work or for that matter don't **have** to do anything. The video cassettes as educational programming don't work, the inmates lose interest. So prison authorities phase out educational programs because of "lack of interest." Another void is created; nothing to do.

Marianna is a new form of lock-up. We will keep you posted on developments in Florida and other new state-of-the-art U.S. prisons, 1991 style.

Biden: Violence Is At A New High

Last year was "the bloodiest year in the United States history," with the murder toll jumping to an all-time high of 23,200, and rapes, robberies and assaults also reaching record levels, according to a report released by Senate Judiciary Committee Chairman Joseph R. Biden, Jr.

The "epidemic of violent crime sweeping the nation" has damaged the credibility of the justice system, the report said. "Indeed, all elements of out criminal justice system are approaching collapse....The nation's state and local law enforcement officers are out-gunned, under-manned, and ill-equipped....The backlog of criminal cases before the nation's courts is crippling the nation's prisons and jails are filled well beyond the capacity they are designed and staffed to handle....And the juvenile corrections system is falling apart."

The study, based on preliminary FBI Uniform Crime Report figures for 1990 and other Justice Department data, was prepared by the Democratic majority staff of the Judiciary Committee. It was issued as Senator Biden introduced his omnibus anti-crime legislation.

The report offers and unusually grim view of crime and criminal justice in the United States. The "record carnage" of 1990 is "terrifying" compared even to the year before, but "the horror of the nation's record levels of violent crime is more properly seen when one compares the America of 1990 with the America of 1960," the report said. In those 30 years, the number of murders grew four times faster than the population, and violent crime as a whole grew more than 12 times faster than the nation's population, according to the committee staff analysis.

"We are the most violent and self-destructive nation on earth," the report said. "In 1990, no nation had a higher murder rate than the United States. What is worse, no nation was even close. Last year, our murder rate was 11 times that of Japan, nearly nine times that of England, over four times that of Italy, and nine times that of Egypt and Greece." The United States compares even more unfavorably with other nations on rape and robbery, having nearly 150 times the robbery rate of Japan, for example.

Summarizing recent testimony by FBI experts and others at Judiciary Committee hearings, the report blamed the crisis on the rise of "powerful, organized gangs intent on killing to gain and keep control of the lucrative drug trade," particularly youth gangs and new Asian gangs, or "Tongs." The report cited "drugs, deadly weapons, and demographic trends" as other factors.

New Report Cites Higher Rates Of H.I.V. Infection Among Inmates

The virus that causes AIDS may be more common among prison and jail inmates, especially women, than previously thought, according to a new study based on testing of nearly 11,000 inmates entering 10 prisons and jails between mid-1988 and mid-1989. The study, conducted by the Johns Hopkins School of Public Health and the Centers for Disease Control, found that rates of Human Immunodeficiency Virus (HIV) infection ranged from 2.1 percent to 7.6 percent for male inmates, and 2.5 percent to 14.7 percent among females.

A variety of earlier studies have indicated HIV infection rates as high as 17.4 percent among inmates from the New York City area, but far lower rates elsewhere. The names of the prisons and jails in the new study were not released, but they were said to represent all areas of the country. The findings were reported in the Journal of the American Medical Association.

At nine of the 10 correctional facilities, women had higher rates of HIV infection than men. The difference was greatest among prisoners under age 25, with 5.2 percent of women in that age group testing positive, compared to 2.3 percent of the men. Minority groups also had higher rates of infection: 4.8 percent overall, compared to 2.5 percent of white inmates. No major difference in HIV infection rates was found between prisons and jails.

Human Rights In The U.S. Criminal Justice System

by Equal Justice U.S.A.

In addition to it's current use and expansion of the death penalty, the United States enters the 1990's with the highest rate of incarceration in the world. Over one million of our sisters and brothers are behind bars in state, county and federal jails and prisons. Statistics show that very disproportionate numbers of poor and minorities – and, increasingly, those who work in solidarity with them – fill these institutions. A hard

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Human Rights In The U.S. *continued from page 7*

and honest look at the demographics of the prison population clearly shows that such systemic biases deeply permeate our criminal justice system—a system promising "equal justice for all." We have identified the primary biases as:

- **Economic Bias:** The majority of prisoners are unemployed or underemployed when they are arrested. One study found that 71% of those incarcerated earned less than $10,000 a year. Most are illiterate. Not surprisingly, two-thirds of all prisoners are serving time for property (i.e. economic) crime. And, while only 26% of wealthy defendants serve prison time, 53% of poor defendants are incarcerated. Further, poor people are much more likely to receive a death sentence. While the well-off can pay for a quality defense, poor people are often represented by less-experienced and overburdened counselors.
- **Racial Bias:** Nearly 50% of prison inmates are people of color, and 43% alone are African-American males. The exact same proportions are true for death row. Approximately 1 in every 9 African-American males is under some kind of correctional control on any given day. Nationwide, African-American males go to jail at a rate **nine times** that of whites. The rate for Latinos is **twice** as high and for Native Americans is **five times** as high. In Hawaii, **three times** as many Asian-Americans are imprisoned as whites. Sixty percent of all women in prison are non-white. **Put in a global context, an African-American male is four times as likely to go to jail as his counterpart in South Africa, making the U.S. the world's leading jailer per capita of people of African descent.** The combination of a white victim and an African-American defendant is much more likely to lead to the death penalty than any other racial combination. Since 1976, no state execution has resulted from a case where the victim was black and the defendant was white.
- **Political Bias:** It is estimated that there are over 150 "political prisoners" currently being held in U.S. prisons and jails. Although the U.S. government denies the existence of any political prisoner in the U.S. system, there is significant documentation of political bias in sentencing and of government targeting of legitimate, progressive organizations and individuals with the intent to criminalize their actions and political movements. Further, there are prisoners currently within the system who clearly receive discriminatory treatment based on their political perspectives and efforts to educate and organize fellow prisoners for humane treatment, services, etc.

Despite this stark and overwhelming evidence to the contrary, the majority of U.S. citizens still believe the system provides "equal justice for all." This is due in great part to the fact that we live in a highly segregated society which promotes race and class divisions. As the global and domestic economic situation becomes more and more desperate for the "have-nots," politicians unabashedly play on the fears of the "haves," using tough talk of "law and order," "war" on drugs and crime and expanded use of the death penalty to gain political mileage (Willie Horton ad, etc.) **Such tactics only feed a climate of fear and hatred that ultimately instructs whites to fear blacks and the rich to fear the poor, diminishing the quality of all our lives.**

We can begin to overcome this climate of fear. But only if informed and compassionate people speak out and call for a renewal of true justice.

Puppets On Strings Of Oppression

By Christofer Kneech

All of you came to prison because society did not enjoy your behavior and actions, whether they condemned such actions to be criminal when they may or may have been, but you all have a common relation which is that you are prisoners in confinement, being insulted, beatened, maced, kicked, assaulted and basically oppressed by your hosts: PRISONCRATS.

I would think that a person would truly come to find that such behavior modifying techniques cause pain, both mentally and physically and that they would rather avoid such treatment instead of recommending it.

But it seems this isn't the case, at least not in Ohio prisons. Here, we are "honored" with puppets who aid such inhumane treatment by fighting their fellow comrades, or joining forces with the puppeteers as a Inmate Organized Crime Bureau Investigator (IOCBI) and snitching and bringing the police to your cell. These are the people who try and intimidate fellow comrades by saying such ludicrous statements as "You can't beat the system" or " There's no use in standing up 'cause you can't win." This transmissible disease seems to have spread to the vast majority of you and appreciation can only be given to the prisoncrats for their subliminated propaganda that they have placed in your jellied brains to be exercised.

But are you not the same robots who also complain about such treatment? The ones who "wish" they could stop this or, get this privilege back? But then again, we can't win – right? Of course not, because people of your nature help the police keep us oppressed, you play into their hands by fighting and arguing with yourselves that the prisoncrats smile and laugh while you fight yourselves.

Has it ever occurred to you to put aside the medacious propaganda you are led to believe and join together and crush the true disease? Stop being puppets, cut the strings of oppression and fight for your dignity and individuality because if you continue to walk and talk as the puppeteers command you – you can always look forward to the psychological torture and scrambled securities and a 24-hour motel of hell to come back to when society labels you as a risk.

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Aftermath MANCI Control Unit & Perotti Update

Numerous organizations inquired into the beatings of six prisoners in the AC Control Unit at Mansfield, Ohio prison by 35 guards. The Cleveland ACLU has requested a written explanation and investigation into the matter. A civil rights complaint was filed by a free world citizen with the U.S. Department of Justice charging prisoncrats with violating the prisoners' rights. An investigation is ensuing. We urge citizens to lodge civil rights complaints with the U.S. Department of Justice **each** time prisoners are brutalized by prison guards. In wake of the brutal beating inflicted upon Rodney King by the LAPD, and investigation by the U.S. Department of Justice into a pattern and practice of brutality, we must demand the same investigation into the pattern and practice of brutality in our gulags. When a citizen lodges a complaint with the Department of Justice, they are more apt to investigate than when a prisoner does so. Therefore, we urge all families and friends of prisoners to lodge complaints with the Department of Justice whenever a prisoners rights are violated.

On March 1, 1991, Linda Leisure ended her fast at the urging of John Perotti. On April 19, 1991, two prisoncrats from the Department of Corrections came to Lebanon prison to talk to John Perotti who was still on his hunger strike. Perotti weighed 169 lbs. (down from 234 lbs. on Feb. 14, 1991) at that time and was being transported by wheelchair. The prisoncrats told Perotti department policy, mandated he be force fed, but if Perotti would eat they would honor their previous promise to send him to MANCI prison on Tuesday, April 23, 1991. They also allowed Perotti to call his attorney, who will be moving for a preliminary injunction hearing in U.S. District Court requesting Perotti's outright release from AC (isolation). Due to these factors John Perotti broke his hungerstrike and is now in the AC Control Unit at the MANCI prison awaiting a hearing date for the injunction. His new address is: John Perotti, MANCI #167712, P.O. Box 1368, Mansfield, Ohio 44901.

While he is still held in AC he is not isolated on a one man AC tier nor subjected to the high degree of behavior modification techniques used at Lebanon prison. Letters urging that the injunction issue releasing him should be directed to: Judge S. Arthur Spiegel, U.S. District Court, USP & Courthouse Bldg., Cincinnati, Ohio 45202.

Inhumane Living At CCI

By Angelo Crimi

CHILLICOTHE, OHIO – Prisoners at Chillicothe Correctional Institution (CCI) confined in the segregation unit are constantly subjected to cruel and unusual punishment.

Prisoners are confined to a building that is over 100 years old and the penalogical practice it was built for is inadequate for 20th century correctional purposes, subjected prisoners to cruel and unusual punishment. The plumbing is as old at the building and only cold water is available in the cells.

On A-Range none of the 18 cells have a flushing mechanisms. The flushing is controlled by guards and as a result of this practice prisoners are subjected to smelling their earlier emitted urine and feces while they sleep and eat. This is denying them equal protection of the law and subjecting them to more cruel and unusual punishment.

When prisoners are placed in "Strip Cells" they are denied toothbrushes, soap and other items necessary to maintain their personal hygiene. This violates institutional policies.

The cells are infested with roaches, ants, rodents (rats and mice) and other insects as well as bird droppings. At times the prisoners foods is sprayed with dangerous chemicals (roach spray) and they are forced to eat it. This causes intentional infliction of mental and emotional distress in violation of state laws, health and sanitary conditions.

Angelo Crimi R-147-656 and six other prisoners have filed a class action lawsuit against the officials at CCI.

One of the plaintiffs in the class action suit (Dakeen White R-151-602) was on a roundtrip at the hospital and three guards beat him while riding the elevator at the hospital. That is a prime example of what prisoners may go through if they stand up and fight for their civil rights. The result from the beating: **another lawsuit.**

Letters of protest should be sent to: T.L. Morris (warden), P.O. Box 5500, Chillicothe, Ohio 45601.

Pro-War Hypocrisy

By Paul Wright

In early March of this year I received a T-shirt that said "official WWI souvenir, brought to you by ITT Rockwell, General Electric, et al." With a small U.S. flag with a skull and crossbones on it.

Property guard L. Marts denied the T-shirt saying it "depicted violence."

I appealed the denial to Superintendent Neal Brown who weaseled around the censorship question and told me to appeal it to Larry Kincheloe, the Director of Prisons.

After appealing it to Kincheloe he replied by stating he was rubberstamping Brown's decision to deny me the shirt because "it is reasonably believed it will cause or incite violence." As the reason changes from the initial denial to the appeal and the buck is passed.

While anti-war T-shirts and messages are deemed conducive to "violence," prison employees are running around with U.S. flags, yellow ribbons, etc., on their shirts saying "We Support Our Troops" and the hearings officer has a poster on his office window with helicopter gunships saying "We Support Our Troops and God Bless America." So apparently the warden and director of prisons find pro-war sloganeering to be fine but anyone that disagrees with

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Pro-War Hypocrisy *continued from page 9*

their jingoistic views is "inciting violence."

When I was in the army I was told that it was to protect rights like that of free speech that the United States has over a half million troops overseas. Yet the reality is free speech exists only as long as what you have to say agrees with those who control the guns or in this case, the prison property room.

Next thing you know those darn white peace doves will be starting riots according to Brown and Kincheloe.

The Prison/Community Alliance (P/CA) is a group of Washington state prisoners and concerned citizens whose goal is to abolish the Washington state Indeterminate Sentence Review Board, AKA the parole board, and bring all indeterminate sentence prisoners under the new SRA guidelines. The courts and the legislature are unwilling to abolish the parole board, so the way the P/CA is focusing on doing this is the ballot initiative, to let the voters of the State of Washington decide whether or not they want the parole board.

P/CA does not need money, they need people willing to get involved and make their voices heard. PLN will cover new developments as they occur. To get involved or for more information please contact: P/CA, P.O. Box 276, Kent, WA 98035.

Prisoners' Legal News
P.O. Box 1684
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Prisoners' Legal News

Working to Extend Democracy to All

Vol. 2, No. 7 July 1991

Racism: The Clouded Lens

By Dan Pens

The other day I flipped on the *Donahue Show* to kill a few minutes before chow. The featured guests were families who raise their children to be racists. Instead of teaching them familiar *Mother Goose* rhymes, the children are taught to recite:

Adolf Hitler is our friend,
He fought for us to the end.

The audience was appalled by such unabashed racism. They booed and hissed and vented their righteous indignation at the racists. In response to blasts of rage from the audience, the parents justified their racism with remarks like:

More than 80 percent of all crimes are committed by [Blacks] (another term was used) And: They [Blacks] carry the AIDS virus. If we don't teach our children to stay away from them, they might end up being infected.

At this point I'd seen enough. I flipped off the tube and started to ruminate about the role that racism plays in our society. And you know something? It occurred to me that the parents of those children on *Donahue* are as much a **victim** of racism as anybody. Hmmmm... maybe victim isn't the best word... ummmmm... dupes. Yes! That's exactly it. Dupes.

Now before I explain any further, let me assure you that I am not a communist. But I'm not a bit reluctant to use some of the terminology that you'd normally associate with communist propaganda. What I'm saying is this: Read on, but don't get the impression that I'm trying to persuade you to become a commie or anything. Just read.

As I thought about racism and the role it plays in our culture, I was struck by a coincidence. There has been a sharp increase of racism during the last decade. It coincided with the inception of Reaganomics, sweeping cuts in social programs, adherence to supply-side economics and the trickle-down theory. In the 80's the rich got **much** richer, and the poor got much poorer.

What I'm talking about is class differences. Ohhhhh.... hmmm... that sounds pretty communistic. Class differences. But hey, they **exist**. And you know something? The mainstream media (would bourgeois media be too much?) **never** utters that phrase: class differences. The mainstream media rarely even acknowledges the existence of classes. Only occasionally will you hear a passing reference to the working class. But you can bet yer' multi-national corporation that you'd never hear the phrase ruling class uttered in the media. Why? Simple. The media is **owned** by the ruling class. It acts in its own self interests.

Ruling class? Another commie catch-word? or reality? I recently read that the top **one** percent of the population own more assets than the lowest 90 percent. Those one percent comprise the ruling class.

What has all this to do with racism? Well it's pretty simple. Consider the social ills that plague our country. Most people would list crime, drugs, crack-babies, welfare mothers, the homeless, gang wars, the underclass, etc. etc. Well now, who's to blame for these problems? Who should we scapegoat? How are racist attitudes a part of the formula?

When we see criminals portrayed in the media (especially in cop-show dramas) they are usually minorities. The media feeds us images, and those images affect our world view. Quick: what image comes to mind when you think of welfare mother? A Black female? How about Crack addict? A Black teenager? How about Violent criminal? A vicious looking Black man? Those images pop into our minds almost unbidden. Where do they come from?

Every day we're bombarded by thousands of images. Tens of thousands. Most are produced by the mass media... by the ruling class. We see news stories about crime, and we're shown the image of a minority.

Occasionally the television will exhibit **anti-racist** fodder... a news story about the KKK, a made for TV movie about neo-nazis (portrayed as the bad guys), or maybe racist parents on the *Donahue Show*. And even though the **words** in the story may be anti-racist... we're still seeing the **images** of racism. Actions **do** speak louder than words! The words fade quickly from our consciousness. Images have a more profound impact on molding our world view; our mental map of the world.

Again, what has all of this to do with the ruling class? Consider this: As long as we tend to see the ills of society in **racial** terms, our vision is obscured from seeing those same problems in terms of **class** differences.

The ruling class controls the media. The media shapes the images (and words) we consume. It is in the interests of the ruling class to hold the clouded lens of racism before our eyes. If we were to view those same problems in **class** terms... we might see ourselves being exploited by the powerful one percent who wield the real power in this country.

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Racism *continued from page 1*

Does this all sound a bit paranoid? Is there really some huge conspiracy to blur the vision of America with racist propoganda? Do media moguls sit around in board rooms and plot how they'll brainwash the masses into hating each other (instead of hating the ruling class?) Of course not. The dynamics I have described in this article don't require any kind of malevolent conspiracy. It's just the way things are. Consider this: Those who own the media – the ruling class – have their own world view... what they honestly believe to be the truth. If they were to adapt a world view that described our social ills as being rooted in class differences... well, that'd probably make 'em feel mighty uncomfortable. No, they're simply more comfortable perceiving things in good 'ol racial terms. Nothing terribly sinister in that. We all tend to avoid seeing things in a way that might be threatening to our self interests.

But you know....? When I was watching those racist families on Donahue, and the hatred they espoused... when I observed how the audience despised them... and how the anger and shame and blame were being tossed back and forth.... Well I just couldn't help but wonder about those fat cats who own the Donahue Show, and the networks. Could they be sitting far in the background, safe and unnoticed, laughing up their sleeves while the lowly plebeians hurl hate and anger and blame at each other?

Violent Crime Up 10% In 1990

Last issue we published an article titled *"Which Shell Is The Pea Under?"* in which we argued against the U.S. government's claim that there exists a "definite and positive" link between locking people up and violent crime rates in the United States. As more offenders go to prison, their argument went, violent crime decreases. The Justice Department's conclusion was that there is an ongoing need to continue prison expansion.

A month after the above claims the FBI issued its Uniform Crime Report. Overall, violent crime – murder, rape, robbery and aggravated assault – jumped 10 percent in 1990. That is only a continuation of a trend of increase that has continued along side the increase in the size of the nation's prison population. Violent has continued to increase year by year, and the increase actually grows larger with the increase in the number of people put behind bars. If anything, the proposition could be put forward that prisons cause violent crime; the more people you lock up the more violent crime there is.

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Paul Wright #930783	Ed Mead #251397
Box 5000, HC-63	P.O. Box 777
Clallam Bay, WA 98326	Monroe, WA 98272

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Clallam Bay Double Celling

On June 12, 1991, Clallam Bay Corrections Center (CBCC) superintendent Neal Brown announced that the 21 million dollar expansion of CBCC was on schedule (but there is no money for teachers and schools in Washington). The expansion plans include renovation of food service and dining facilities, expansion of the sewage treatment plant, and construction of a warehouse, a gymnasium and 400-bed medium security cell block. The gym and warehouse are supposed to be finished in February, 1992; the expanding dining and food service areas in July/August 1992; and the new cell block in October/November 1992.

Double bunks have been installed in every cell in the existing units at CBCC and will be double celled as needed. For now however, CBCC's population won't go past around 570 prisoners until the sewage treatment plant is expanded. Once that is done, around October 1, 1991, the population will be increased by up to 400 more prisoners.

As of July 1, 1991, CBCC will be designated a close custody facility making CBCC and the penitentiary at Walla Walla the only close custody prisons in the state.

Once the additional cell blocks and such are built and operational the number of DOC employes on the payroll will go from the current level of 300 to about 415.

Prison/Community Alliance Update

By Carrie Roth

June 10, 1991 the Legislature went back into session and by the time this is read the session should be over. This is a time when there is a lot of speculation and rumors going around. One rumor is that Senator Gary Locke is against the continuation of the Indeterminate Sentence Review Board (ISRB) and that he is actively trying to stop their funding. Senator Locke is a former Deputy Prosecutor and wrote the state budget (HB 1300) which allocates the ISRB over $3 million dollars. This is no different from previous years. As Sen. Locke expressed to me, "the elimination of the ISRB would be unfair to prosecutors who did not press all the charges they could have at the time because they knew that under the parole board the offenders could be made to do the time anyway." He said a lot of charges were never pressed that would be pressed in todays courts under the SRA. He seemed to have the impression there is no plea bargaining under the SRA.

On another note, I have been following the civil commitment hearing of Vance Cunningham closely. Actually closer than I wanted to as I was summoned to jury duty and had to go through jury selection for his trial. Now all of us know it was a hearing, but unfortunately the jury thought of it as a trial and of course due to emotionalism of the jury, Cunningham was tried a

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Prison/Community Alliance *continued from page 2*

second time for his crimes and committed. I honestly do not feel any person who goes through the commitment proceedings has a chance of not being committed. The juries will feel the state has a reason to commit a person so therefore he shall be committed. The jury however confessed they ignored expert testimony and made their decision based on the fact that he had committed prior offenses. They also based their decision on the fact that Cunningham had not had prior treatment. Of course, none was offered to him the times he had asked for it.

I think we all need to recognize the civil commitment law for what it is. It is the state's way of covering their negligence in not treating sex offenders in the first place. It was not until last year that the law was change to allow offenders who committed prior to July 1st, 1987 to go to the Sex Offender Treatment Program (SOTP) and it is still only if there is space and money available. The problem is these guys offended while DSHS was still involved in treatment and when the treatment changed over to the DOC the DOC didn't feel they were responsible for the pre-July 1, 1987 offenders.

The law states offenders who are maxing out can be referred for civil commitment. But that is not what is happening. Some of the seven at the Special Commitment Center were about to be released with **good time.** It is insane. Cunningham was actually out for 4½ months and was not even suspected of committing a new crime when they picked him up. And then they put him in a prison where there are no staff qualified to treat a sex offender. It is obviously a game by the state. It will keep the heat off the DOC if DSHS does let someone out who commits a crime. What state psychologist is going to sign papers and testify in court that someone is safe to be out if they are going to be drug through the mud if someone does reoffend?

Judge McCullough at Cunninghams trial asked me why I thought you could not predict future dangerousness. I thought of the answer after I left the courtroom. If the prediction of future dangerousness was so simple, the ISRB wouldn't be so inaccurate...or would they? Speaking of prediction of future dangerousness, one of the writers of the law, David Boerner, wrote in his book *Sentencing in Washington* that prediction of future dangerousness was wrong up to 90% of the time. This was written back in 1985...before, of course, he tried to become a Federal district court judge.

Lastly, we are still planning the initiative in 1992 to bring it before the people to vote whether or not they want to continue to support two distinctly separate sets of sentencing in this state. We aren't rushing it because we have time to feel our way through this. However, if we are to succeed, we are going to need a lot of outside people to gather signatures. Also, everyone needs to register to vote. There are so many of us out here spread across the state, we could have an impact of government issues pertaining to the prisons if enough people would get involved. In the past, everyone just sat around waiting for someone else to make changes and consequently very little was achieved because enough people would not get involved. The prison officials are counting on this to continue, and if it does, this initiative won't even make it to the ballots, let alone pass. Another way to show support for offenders in our states prison system is to attend both the Sentencing Guidelines Commission and ISRB meetings. Also, don't forget the toll-free number to Olympia (1-800-321-2808) if you want to talk to the DOC or the ISRB or other agencies in Olympia. There are a lot of free publications and reports available, but they don't advertise them and you'll have to request them. Get involved or stop complaining.

Police Brutality Or Brutal Police?

By Paul Wright

By now most people have seen the gruesome home video of Rodney King being beaten senseless by Los Angeles police. The only thing unusual about this episode is that it was captured on film, not that it happened to begin with.

It is unfortunate that the video's existence was revealed before the cops had a chance to file charges against King, as the usual practice is to claim the victim "assaulted" police who then had to beat him to a pulp.

The mainstream media has treated the King beating as an isolated exception. Yet in 1980 Arthur Duffy, a black man, was beaten to death by Miami police. They claimed he was speeding. The acquittal of the cops led to rioting in Miami.

In March of 1991, after the King video had been broadcast, a man named Doug Jewett was beaten to death in West Palm Beach, Florida, by two policemen. Mr. Jewett's offense? He was hitchhiking when judge, jury and executioner pulled up. Jewett was beaten to a pulp and suffered what the county medical examiner called "the worst genital destruction I have seen outside of Amnesty International reports on Third World dictatorships." Jewett's death didn't get the publicity King's beating did because it wasn't captured on video. The only reason the coverup by West Palm Beach police failed was because the death was witnessed by an employee of a local newspaper. Two policemen have been charged with second degree murder in Jewett's death. I doubt that if you or me had beaten a cop to death in the street that we would only be charged with second degree murder.

The beatings and brutality are not confined to civilian police. *PLN* has reported several beatings and assaults on prisoners across the country. The prison discipline study reported that 70 percent of the prisoner respondents reported seeing beatings or physical abuse of other prisoners at least on a monthly basis. The study found no great deviations from one region of the country to another, and concluded that such abuses of power are the rule rather than the exception in the American gulag archipelago. Unfortunately, prisoners don't have video cameras to document these beatings.

In Los Angeles at least 17 people, most of them black, died after being put in choke holds by police. In 1985 the U.S. Supreme Court decided *Lyons v. Los Angeles*, a case in which the court declined to halt the practice of killing

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Police Brutality *continued from page 3*

suspects by police. The court held that the plaintiff could not show a likelihood of being killed himself. Friends who have been arrested in Los Angeles county uniformly comment on the outrageous levels of force used by police.

We should examine why these common, almost daily, exercises in brutality get little attention. Some say that the police exist to protect all citizens, yet it is readily apparent that some citizens are more protected than others. Historically, police have existed to ensure that those with property are able to keep it from those without property. In effect, the police become the defenders of the status quo, of a society where a minority of rich people hold nearly all of the wealth.

Some of the most obvious examples of this are the large amount of resources police have poured into union busting, surveillance, disruption and even murder of political dissidents, etc. What does union busting have to do with protecting the public? Nothing, but it has a lot to do with protecting the profit margins of the big companies. The collusion between police and corporations goes back 140 years in U.S. history.

In the urban areas of today's America the police are more like an army of occupation than a public safety force. Largely white and middle class, few cops live in the areas they patrol (due to the segregated nature of many neighborhoods in the U.S.). There is an enormous difference in a white home owner's perception of the police and that of an unemployed black teenager. The home owner will likely have contact with the police only when he calls them for help or perhaps for a traffic offense. The black teenager will generally encounter police while being harassed, stopped and searched, etc.

In prison the principle is the same with some small differences. In most prisons a majority of the captives are black or hispanic and a majority of the guards are white. Except it is the prisoners who are plucked from their homes and stuck in cages far from their families.

The police recognize these differences in how they treat their victims. A white homeowner is unlikely to be beaten to death due to the likelihood of having political connections, being able to get an attorney, and the high level of his credibility relevant to the police. The absence of this makes minorities, especially youth, an easy target of state repression.

The community, in an effort to lessen these abuses, should be policed by those who live there, not foreign occupation forces. It is time that police and other forces of "law and order" were held as accountable for their actions as citizens are for theirs.

[**Editorial Note**: *Paul wrote the above with what remained of the two inch stub of a pencil issued him, while locked down on administrative segregation pending an investigation into allegations that he was a threat to the orderly operation of the prison. That investigation ended with "inconclusive results" and Paul was eventually released back into the population. This writer believe Paul was locked up as a form of retaliation for his exposing police brutality at the prison in the pages of this newsletter.*]

Pro Se Litigants Entitled To Litigation Costs

Benton Burt was a pretrial detainee in San Francisco who filed suit under 42 USC, § 1983 in federal court claiming he was confined under illegal and unconstitutional conditions. At a bench trial Burt won his case and $500.00 in damages. He represented himself throughout the proceedings and under 42 USC § 1988, moved the court for this costs and expenses in bringing the suit, most of which the judge denied.

The Ninth Circuit Court of Appeals vacated and remanded the judges ruling. The Court of Appeals held that while a Pro Se litigant is not entitled ot attorneys fees for representing himself he was entitled to the same reimbursement of costs that an attorney representing him would have received.

In this case, the court ruled Burt was entitled to reasonable costs he incurred in secretarial and paralegal services others provided him that he was billed for. Burt was also entitled to reimbursement of his photocopying costs and for the reproduction of photographs, blow ups and other visual aids he used to present his case. Burt's witnesses were also entitled to the statutory witness fee for testifying on his behalf.

Burt was entitled to all actual costs he incurred in prosecuting his litigation, to include the appeal. See: *Burt vs Hennessey*, 929 F.2d 457 (9th Cir. 1991).

Prisoners Allowed To See Evidence Against Them

A federal prisoner in Pennsylvania was infracted and charged with making threats of bodily harm to another prisoner and refusing a cell assignment. The threats were supposedly made in a letter Young, the prisoner, gave to a guard while refusing to cell in with his cellmate who had threatened to rape him. At the disciplinary hearing the hearings officer refused to give Young a copy of the letter which Young claimed had no such threats.

Young filed suit and the district court dismissed it as frivolous. The Court of Appeals for the Third Circuit reversed in part holding that prison officials had violated Young's right to due process by not allowing him to refute the charges against him by presenting his own letter. The court warns against hearing officers exclusive reliance upon prison employee's oral summary of information implicating the prisoner. The Court also held the hearing officer may have violated Young's rights by not allowing him to be present while questioning the reporting guard as a no security reason was proffered for refusing to allow him to be present. See: *Young vs Kann*, 926 F.2d 1396 (3rd Cir. 1991).

Pig Park Update

Recently a *PLN* reader reported that a park for employees of the Washington State penitentiary (WSP) was being built only for employees. The park opened on March 18, 1991, as an "employee park" as a 4 acre area adjacent to the highway and east of the penitentiary, it

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is surrounded by a new six foot cyclone fence. The park is open from dawn to dusk and it's use is limited to **full time WSP employees.** The park is now on land that was formerly a game farm area.

We would appreciate any more information on this park from our readers, namely, if the land or facilities is being bought or paid for in anyway with state tax money or inmate welfare fund money, who approved the project, etc. Anyone with information on this please write Paul Wright, either direct or in care of *PLN*.

Prisoners And The Grievance System

By Paul Wright

The Washington Department of Corrections (DOC) and many others have grievance systems to resolve complaints within the prison system rather than going to court to settle them.

Many prisoners are skeptical of the grievance system as it rarely resolves their complaints, especially when it involves misconduct by an identified staff member.

However, regardless of how effective or ineffective the grievance system is, it is important because it provides a written, public record of complaints filed within the DOC. One that is data based and easily accessible . This is important when a person files suit and through discovery can establish if anyone else complained of the same practice or misconduct giving rise to his own lawsuit. If 30 prisoners also complained about similar misconduct by the same staff member it will be more difficult for the warden or his superiors who may also be defendants in the lawsuit to claim that they had no knowledge fo the propensity to misconduct by their underlings and for not taking steps to stop it.

Grievances filed and the DOC response to them are available to attorneys, the public and others through the Public Disclosure Act in Washington state.

Since April of 1991 Mark Crewson has been the Grievance Coordinator at the Clallam Bay Corrections Center (CBCC). Since taking office Crewson has openly boasted of infracting prisoners to cut down on the number of grievances filed as he claims "too may grievances" are being filed. To make good on his threats and to discourage prisoners from using the grievance system, Crewson has infracted at least five prisoners that I know of (including myself) for using the grievance system.

The First Amendment to the U.S. Constitution protects the right of citizens to petition the government for redress of grievances. The Supreme Court has ruled that this right to petition extends to the departments of state government.

See: *California Motor Transport vs Trucking Unlimited et al.*, 404 US 508, 510; 92 S.Ct. 609, 612 (1972).

Courts have ruled that prison officials cannot discipline or punish prisoners who complain about prison conditions as it violated the right to seek redress of grievances from the government. See: *Wolfel vs Bates*, 707 F.2d 932 (6th Cir. 1983); *Gibbs vs King*, 779 F.2d 1040 (5th Cir. 1985) and *Franco vs Kelley*, 854 F.2d 584 (2nd Cir. 1988).

The about were all state prisoners who filed suit under 42 U.S.C. § 1983 and the courts found in their favor. The Fifth Circuit has also held that when DOC regulations state that prisoners using the grievance system will not be retaliated against or punished (Washington grievance policy also carries this guarantee) for using the grievance system that a liberty interest protected by the due process clause has been created. See: *Jackson vs Cain*, 864 F.2d 235 (5th Cir. 1989).

In *Sprouse vs Babcock*, 870 F.2d 450, 452 (8th Cir. 1989) the Court held:

"...we hold that the filing of a disciplinary charge against Sprouse, although not actionable under § 1983, is actionable under § 1983 if done in retaliation for his having filed a grievance pursuant to established procedures. Prison officials cannot properly bring a disciplinary action against a prisoner for filing a grievance that is determined by these officials to be without merit anymore than they can properly bring a disciplinary action against a prisoner for filing a lawsuit this is judicially determined to be without merit. That the constitution does not obligate the state to establish a grievance procedure is, we believe, of no consequence here, since what is at stake is a prisoners right of access to an existing grievance procedure without fear of being subjected to a retaliatory disciplinary action. As a purely practical matter, we observe that if such disciplinary actions were allowed, the purpose of the grievance procedure – to provide an administrative forum for the airing of prisoner complaints – would be defeated."

In a case brought by pre-trial detainees complaining, among other things, of retaliation for filing grievances the Eight Circuit Court of Appeals in *Johnson El vs Schoemehl*, 878 F.2d 1043, 1054 (8th Cir. 1989) ruled: "Here, however, the grievance system exists to encourage the efficient and speedy resolution of disputess – literally preventing every unhappiness from becoming a "federal case." The prisoner is invited to submit complaints in lieu of litigation. To establish a grievance system whose use invites retaliation not only defeats the purpose of having the procedures, but it is obviously intended and otherwise constitutes punishment for the exercise of invited conduct."

The Eleventh Circuit has also held that infracting prisoners who file grievances complaining of conditions of confinement raises a constitutional issue. See: *Wildberger vs Bracknell*, 869 F.2d 1467, 1468 (11th Cir. 1989).

In Washington the grievance system at the Washington State Penitentiary was certified by the U.S. District Court in 1984 which means that the grievance procedure must be exhausted before filing in that Court. The grievance systems in western Washington affecting prisoners in Monroe, Shelton, Clallam Bay, Purdy and McNeil Island are not certified and prisoners do not need to exhaust the grievance system prioer to filing suit. Suits brought under 42 U.S.C. § 1983 do not require the exhaustion of administrative remedies prior to filing suit in federal court in civil rights suits for constitutional violations.

Editorial Comments

By Ed Mead

First of all, I would like to share the situation and some of the thoughts of a former Palestinian prisoner, a man who was only recently released after having served 17 years in Israeli prisons. His name is Ali Mohammed Jiddah, and he was born in Jerusalem in 1950. Shortly after his release, Ali traveled to England, where he talked openly about unfolding events in the Middle East. In an interview in the British leftist newspaper *FRFI*, he was asked to comment on the character of Palestinian support for Saddam Hussein. I am quoting a large portion of his response because I think it is important for our American readers to hear the Palestinian reasoning behind their support of Iraq during the recent war. Here is part of what Ali had to say:

"On this issue there is a great deal of misunderstanding of the Palestinian position. We were strong and open supporters of Iraq, but not because we are adherents of Saddam Hussein. We do not approve of what he is doing to the Kurds and to the progressive forces inside Iraq itself. Being an occupied people ourselves we cannot approve occupying another country by force.

"Our support for Iraq came from our deep knowledge that this war had nothing to do with democratic rights, human rights–all this is the hypocrisy of the imperialists. The war was a war of the six big oil companies. It aimed to establish the fact that in this world there are superiors and inferiors. The Americans and British were saying – we the imperialists are the superiors and you, the poor nations, are the inferiors and never try to change this. Otherwise you will suffer the same destiny that we gave to Iraq.

"As Palestinians we have an interest in fighting the imperialists everywhere. And Iraq, at that moment, wasn't only representing itself. It was representing the Third World in general against imperialism. This is the view of the majority of our people.

"Nevertheless when we called on our people to support Iraq we ... said to them, 'Don't forget that we have our own contradictions with the Iraqi regime. Today he is playing such a progressive role in fighting the imperialists, but tomorrow he will turn back against his own progressive groups inside Iraq and against us, revolutionary groups inside the Palestinian arena.'"

On his return to Palestine, Ali Jiddah was subjected to systematic Zionist harassment, and is now due in court where he faces very serious charges. Having been attacked and beaten by Zionist soldiers he was charged with attacking them with the aim of stealing their weapons! Please send letters of protest to Roni Milo, Minister of Police, P.O. Box 2001, jerusalem 91020.

In a brighter item of news, a group called 127 House (P.O. Box 11481, Knoxville, TN 37933-1061) has chosen *Prisoners' Legal News* as the focus for its first international compilation benefit tape. All profits from the sale of this tape will be sent to the *PLN*. The final tape will be accompanied by a booklet, too. If you have audio contributions on Type II cassettes or better, especially electronic, industrial, collage, punk/KC, or spoken pieces, send them to 127 House. Mail them a SASE and your material will be returned to you. All contributors will receive two copies of the finished product. The deadline for submissions of recordings is September 1, 1991. Spread the word.

Maybe Paul and I should call this column "The Begging Corner," as it is from here that we are always driving on you for donations. Well, here we are once again, asking you for money. The response to our call in last month's issue was a good one (it about covered our cost of production), but the contributions came mostly from outside readers rather than prisoners. I would like to see our base of support on the inside take on more of the obligation for our financial support. So please, you women and men behind bars, send us some stamps or a few bucks from your commissary account. We are trying to be here for you; try to be there for us. As always, we like getting your articles, artwork, and related newsletter materials, too.

That's it for this month. Be sure to pass this paper on.

We Need Jobs, Not Jails!

Overcrowded And Unfair

By Gary Parker

Human nature and society were not transformed when the SRA was implemented in 1984. The transformation was meant to occur in the basic philosophy of this state's justice system. The old system did not work. Some offenders were paroled too soon, others were imprisoned too long. The parole board was rarely able to see beyond their smudged glasses. Eventually people quit pretending the old system worked, and a new one was implemented to take its place.

The Sentencing Reform Act (SRA) was implemented on July 1, 1984. It was enacted to make the justice system more fair and equitable for offenders and for society. SRA prisoners (convicted after July 1, 1984) may argue about SRA's merits, however, pre-SRA prisoners do not argue as much. They are sullen and exhausted. They have argued for seven years through every conceivable avenue of appeal that they should be treated like post-SRA offenders.

Two kinds of time coexist in Washington prisons. They appear to be identical on the surface, but they are fundamentally different. SRA prisoners do their time alongside old guideline prisoners. They coexist, but the time they do is radically different.

Old guideline offenders had their minimum term of incarceration determined by the parole board (now called the ISRB). SRA prisoners have their terms set by an elected Superior Court judge. Old guideline prisoners have little or no due process protection at parole board hearings. SRA felons have the complete due process afforded by the Superior Court. After inmates complete their minimum terms of confinement, the difference between old guideline and SRA prisoners becomes conspicuously clear.

Punishment is the stated goal of all SRA incarceration. Rehabilitation is the actual goal for old guideline offenders. The ISRB is required by law to be satisfied that an

Continued on page 7

Overcrowded *continued from page 6*

old guideline offender's rehabilitation is complete before they can grant parole. Recidivism rates for paroled prisoners would suggest, though, that a simple coin toss may be a more accurate predictor of rehabilitation than the parole board.

SRA inmates receive a certificate of discharge when they complete their minimum terms, and they may not be reincarcerated unless they are convicted of a new crime in court. Old guideline prisoners, however, must still have a parole plan approved. They must abide by the conditions of their parole. And they may be reincarcerated by a mere board hearing. The discharge date of the SRA prisoner is guaranteed – it is a goal that will be reached. The parole date of an old guideline prisoner may be changed wildly, unpredictably, and often irrationally. Because rehabilitation is poorly defined and highly subjective. Legal review of a board decision to deny parole is virtually nonexistent. Consequently, while SRA prisoners live in a certain world of crime and punishment, old guideline prisoners dwell in an uncertain world of undefined rehabilitation, wildly shifting parole dates, slipshod parole hearings, and absentee parole reviews.

Although the law requires that old guideline prisoners have their minimum terms set in accord with the SRA guideline ranges, hundreds upon hundreds of them have surpassed those terms and are still imprisoned. Some have been imprisoned continuously, and others have been paroled but subsequently had their parole revoked and been reimprisoned. They should all be discharged from custody. Period. Some of them may reoffend, but the same can be said for SRA prisoners who are discharged as well.

Old guideline prisoners should be given a certificate of discharge when they have completed their minimum terms. They are not being rehabilitated by the old lame-duck parole system – they are being debilitated, disappointed, disillusioned, and unfairly incarcerated.

How can the State of Washington morally continue to demand that old guideline prisoners be "rehabilitated" when it has abandoned that demand for all SRA offenders?

Time is money. It is enormously more expensive to perpetuate the old pre-SRA system than it would be to abolish it. Hundreds upon hundreds of old guideline prisoners who have completed their SRA guideline minimum terms continue to occupy extremely costly prison space. The cost to society is doubled when you consider that the productivity of both the prisoners and prison staff are lost to society. The United States is a net importer of labor, yet this state needlessly incarcerates hundreds of potentially productive workers. It employs thousands of staff to manage them in prisons and supervise the thousands of old guideline parolees.

There are hidden costs to the needless incarceration and overcrowding of thousands of prisoners. Putting two prisoners in cells designed for one may save the state a few pennies, but it may cost society many pounds. Those are human beings being jammed together into tiny cells. They are forced to live in inhumanely close quarters. Nearly all prisoners will be released. It is then that the hidden costs may be revealed: more crime followed by more incarceration. It is a vicious cycle made more inevitable when prisoners are squeezed together in tiny cages for months or years.

Some of the trauma and injustices may be avoided by abolishing the old pre-SRA parole system. Granting a certificate of discharge to old guideline prisoners who have completed their SRA guideline minimum terms will ease some of the overcrowding, and eliminate some of the injustices currently built into the two-tiered system.

Other options may exist to reduce prison populations, but none are less expensive or more equitable than abolishing the remnants of the rehabilitation hoax.

No Warrantless Search Of Departing Visitor

Prison officials strip-searched a prisoner's sister at the conclusion of a visit because of a suspicion that she was smuggling marijuana to him. Nothing was found. She brought suit under 42 U.S.C. section 1983. The defendant prison officials sought qualified immunity from damages, arguing that they were entitled to such immunity because the right of a visitor to be free from a warrantless search was not "clearly established" at the time of their conduct.

The court disagreed, saying there was no question about the state of the law at the time of the incident. A warrant (based upon probable cause) is always required before a search of a person leaving a visit can be done.

The Warrant Clause exception that allows prison visitors to be searched on the basis of reasonable suspicion that they are trying to smuggle contraband into a prison, a standard less stringent than probable cause, does not justify warrantless searches of persons as they leave following a visit. So held the U.S. Court of Appeals in *Marrion v. Smith*, (8 Cir. 1991).

U.S. Prison Populations Grew 8.2% In 1990

Washington State Has Second Highest (15.4%) Increase

The number of state and federal prisoners grew 8.2 percent last year, the U.S. Justice Departments Bureau of justice Statistics (BJS) announced on May 15. According to the Bureau, the 1990 growth rate was more moderate than the 13.5 percent increase recorded during 1989.

Since 1980 the nation's prison population has increased by almost 134 percent. "The 58,686 additional inmates added during 1990 is equal to a need for about 1,100 new prison beds every week," said Bureau Director Steven Dillingham.

"We estimate from what the prison authorities reported to us that prisons throughout the country were operating at 18 to 29 percent above their capacities," Dillingham said. "In addition, we found that local jails were holding more than 18,000 prisoners because state institutions lacked space."

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U.S. Prison *continued from page 7*

For the first time since 1981, the increase in male prisoners during 1990 exceeded that for women. The number of male prisoners rose 8.3 percent during the year, whereas the number of female prisoners increased 7.9 percent.

Thirteen states and the federal system recorded increases of at least 10 percent in the number of prisoners last year, led by Vermont (up 15.9 percent), Washington (up 15.4 percent), and New Hampshire (up 15.1 percent). The number of inmates per capita also reached a new record high of 293 prisoners with sentences of greater than a year for every 100,000 U.S. residents.

From: Corrections Digest

– Letters From Readers –

Approaching Agreement

I think [the letter from] "name withheld, TRCC" had a good point about stigmatizing sex offenders. I find it painfully ironic that the people in our society most victimized by stigmatization (i.e. prisoners) sometimes do the same thing to other inmates. If you include date rape, I wonder out of 100 men walking down the street how many haven't committed an act that could be considered a "sexual offense" in a court of law. Of those that haven't committed a sexual offense, how many would have if they weren't afraid of the legal consequences. Keep in mind that adultery, sodomy between consenting adults and other voluntary human behaviors are considered illegal in some states. In Texas up to a few years ago a man living with his wife legally could not rape her, in other words she was his sexual property. In a way we as a society are locking up our own "deviant" tendencies by putting sexual offenders away for a good long time.

I found Dan Pens' article informative. I have one emotional reservation about the issue of confidentiality [of statements made by sex offenders during treatment]. I keep remembering the sex offender that made drawings of his kiddy torture van that he hoped to build if he was ever released. As a father I'm tempted to say to hell with constitutional [protections,] I want to protect my children.

The *PLN* should try to keep in mind that fear is a powerful force, when contrasted with constitutional questions in the minds of the great majority of the public.

Ken Hirschhorn, Vice President
South Seattle Crime Prevention Committee

Editorial Response: Fear is indeed a powerful force. When a society is assailed by fear it is extremely susceptible to authoritarianism. We can be easily led to accept the erosion of our constitutional protection in exchange for "protection" from the perceived fear of monsters hyped on us by the media. Fascist governments have shown how childishly simple it is to lead a society down this path.

It's a shame that we're fed a steady diet of fear by the press and politicians. But they have discovered another powerful characteristic of fear: it sells newspapers and it gets votes. This society doesn't need so much to "take back our streets from the drug pushers and sex criminals" as it does to "take back **our** interests from the media corporations and politicos who shove fear down our throats in their **own** self interests."

Dan Pens,
PLN Contributing Editor

Needs Help

After reading the article "Habitual Criminal Case Update" in the *PLN*, I am hopeful there may be some help for me.

I am serving a 25-50 year sentence in the Michigan DOC for Breaking and Entry and [the] Habitual [Criminal Act]. It's my second prison term and under current Michigan law, I get no good time or early release considerations. I've already got 11 years in and I'm not even half way through.

The Michigan courts make everything so difficult. I'd really like to attack this sentence but I don't know where to begin. Can you put me in touch with someone that can advise me?

Barry Conn #150595
4713 W. M-61
Standish, MI 48658

More Help Needed

I am a California prisoner housed at Pelican Bay state prison. I have trouble getting reading material in prison. However, now that I have received the *PLN* I would like to request that I be added to your mailing list. I would also like to request any information you might have that would help us prisoners to request reading materials.

F. Cortez #D55667
P.O. Box 7500, D5, 115
Crescent City, CA 95532

[**Editor's Note:** *We get many letters from readers asking us for legal help in one form or another. Being prisoners ourselves, it is everything we can do to publish this paper each month, along with doing our own personal legal work and the prisoners' rights litigation at our respective prisons. Accordingly, if you can give these readers any informational help, please do so.*]

Kudos For *PLN*

The Humanists of Washington have been receiving *Prisoners' Legal News* since issue #2. We offer our congratulations on inspiring Rick Anderson to write about some of the issues you raise in two of his recent columns. We also saw Erwin Knoll's editorial comments regarding *PLN* and your reports of prison brutality in the May Progressive magazine. This exposure is quite an accomplishment.

We continue to be more and more impressed with the depth of dedication and the quality of information conveyed in your publication. Your May edition is absolutely superb. Your work represents a groundbreaking

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concept and is the most significant new endeavor we've seen in the human rights movement for many years.

So, as you suggested, we asked ourselves, "If not now, when? If not us, who?" Please accept the enclosed donation along with our heartfelt support for the work you are doing and our great appreciation of your accomplishments in the face of a repressive, unjust, and brutal prison system. You are an inspiration to all of us who work for a more humanistic world where all people may live in peace and be with justice.

Barbara Dority, President
Humanists of Washington

Disagrees With Attorney's Article

I would like to make some observations about the article titled ".100 hearings; Opinions of an Attorney" by Barbetta Ralphs, Attorney. I believe I am qualified [to discuss her article] because I have served a total of over eleven years on parole. It is very significant that Ms. Ralphs would take the time and care to write a concerned article which contains a number of constructive and helpful suggestions for prisoners who have to deal with the I.S.R.B. [parole board] and the [RCW 9.95].100 hearings. I have met many prisoners who had no idea what to do or say, or how to organize some kind of presentation when going before the board. Then, after the hearing, all they could say was, "Man, I got screwed!"

Part of the reason why people don't know how to act in their own best interests is due to the Unrealistic Expectation Propaganda which abounds on both sides of the fence in the criminal justice system. Some of this shows up in Ms. Ralph's article where she says, "...one other strong factor which mitigates against release, and this in the nature of what one inmates does to another, namely: many of the persons who are or have been released do not believe they need to follow the 'rules' set forth for them while on parole." To analyze this idea we need to ask a couple of questions: When did criminal law change from the precept that each case stands on its own merit, to the idea that one case affects thousands of others? When did the process of law change from comparing the facts with the law and making a ruling, to public voting in the news media? Taking this "strong factor" to its logical extreme, we could just do away with courts and have each prisoner brought before the legislature, to vote on guilt and the length of sentence. Republican prisoners could be paroled by the legislature and vetoed back to prison by a democratic governor. Truly, no parolee ever sat down and reasoned with himself; hey, I'm in a bad mood so I think I'll just mess up two thousand prisoners' release dates and just not report to my parole officer. So the board relies on the unfortunate acts of a few to justify increasing the sentences of many who sit around in prison, not doing any crimes and hoping for release some time before social security eligibility. It is highly unlikely that sending the rest of the herd to a slaughter house would have any effect on the bull in the china shop.

D.H., Shelton, WA

Reality of Sexual Victimization Obscured by "Predator" Label

(Reprint of letter to the Seattle Times)

Thomas Shapley in his column on sexual predators (Focus, April 7) does a disservice to the sexually abused and sexually assaulted. He reminds me of the man in the Mae West movie. When he offers to protect her, Mae West asks: "Who are you going to protect me from?"

The fury directed at the tiny class of individuals we are inventing and calling "sexual predators" obscures the horrifying reality of sexual victimization in this culture. Children and women do not have sexual predators to fear most. The threat to our safety comes from our fathers, husbands, boyfriends, brothers, uncles. One in every group of four women knows this from experience and knows that locking up every so-called sexual predator will not protect us in a society where the sexual violation of women and mostly female children has been approved and tolerated.

In a recent case, the Indiana Court of Appeals ruled a teenage girl could not sue her father for repeatedly raping and sodomizing her because the traditional doctrine immunizing parents from suit by their children – a doctrine designed to protect the integrity of the family.

Only recently has rape of a spouse been declared criminal. The prosecution of individuals for sexual abuse of their children is a recent development. I know it's much more comfortable for Shapely and others to identify as the problem a tiny group of criminals to relegate monstrosities to monsters. To examine the reality and its causes requires participation in a real solution, which means we look to the pervasive sexism of our culture.

Sexual violation supports male dominance as much as foot-binding and other forms of physical mutilation. In our culture, the restraints are not so obvious, but they are as real.

Every woman in this society is shackled by fear. Every child grows up with an experience of power that offers two choices: be brutal or be brutalized.

The criminal justice system cannot remedy a problem so enormous and so endemic. The courts would collapse under the weight if we prosecuted every perpetrator of a sexual crime.

To suggest, as Shapely does, that locking up sexual predators will make children and women safe distracts our attention from the work that actually needs to be done. We have rather suddenly declared criminal what has been deemed customary. But we haven't changed the customs. If you want an end to sexual abuse, end sexism.

Scapegoating "sexual predators" will only shield from scrutiny the far greater numbers of those who commit sex crimes.

Patricia Novotny

Bad Water, Backed ر Toilet States Claim

A prisoner filed a civil rights lawsuit alleging that the conditions in the housing unit in which he was confined violated his eighth and fourteenth amendment rights. The trial court refused to dismiss the claim that living conditions in the housing unit were a health hazard because water came out of the pipes rusted, there was a scent of bad smelling pipes, and he was exposed to human waste which backed up through the plumbing. While the defendant prison officials contended that these conditions were no more than "an inconvenience or discomfort," the court found that it could not "with assurance determine that the conditions" in the housing unit met an "essential" or "minimum" standard of sanitation. *Buffington v. O'Leary,* 748 F.Supp. 633 (N.D. Ill. 1990).

From: Jail & Prison Law Bulletin

The Prison/Community Alliance (P/CA) is a group of Washington state prisoners and concerned citizens whose goal is to abolish the Washington state Indeterminate Sentence Review Board, AKA the parole board, and bring all indeterminate sentence prisoners under the new SRA guidelines. The courts and the legislature are unwilling to abolish the parole board, so the way the P/CA is focusing on doing this is the ballot initiative, to let the voters of the State of Washington decide whether or not they want the parole board.

P/CA does not need money, they need people willing to get involved and make their voices heard. PLN will cover new developments as they occur. To get involved or for more information please contact: P/CA, P.O. Box 276, Kent, WA 98035.

Prisoners' Legal News
P.O. Box 1684
Lake Worth, FL 33460

Prisoners' Legal News

Working to Extend Democracy to All

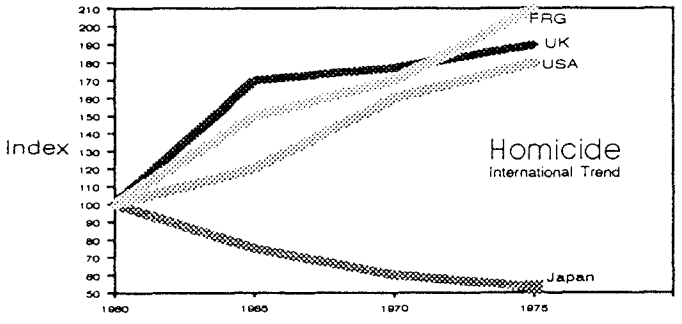
Vol. 2, No. 8 August 1991

A Lesson From Japan

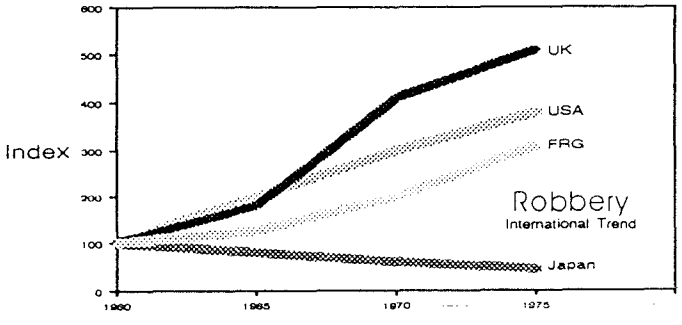
By Dan Pens

The Japanese may arguably have the most effective justice system in the Western World. A glance at the accompanying graphs will readily verify this statement.

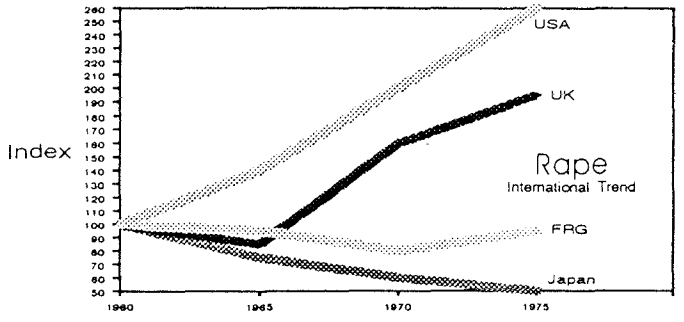
So what are the Japanese doing right? If one were to believe proponents of popular trends in the U.S., you'd think the Japanese must build a lot of prisons. They probably have harsher sentences, and none of that Constitutional molly-coddling of criminals that bogs down our courts. In short, punishment in Japan must be much more severe than in the U.S. .... Wrong.



According to John O. Haley, (U.W. Professor of Law and East Asian Studies) in *Mediation and Criminal Justice*, (Sage Pub. 1989) the focus in Japan veers away from retribution and revenge. The main goal of the Japanese justice system is a restoration of peace between the victim, offender, and the community. This approach requires confession, remorse, and repentance from the offender. But it equally requires fairness, leniency, and absolution from the criminal justice system.

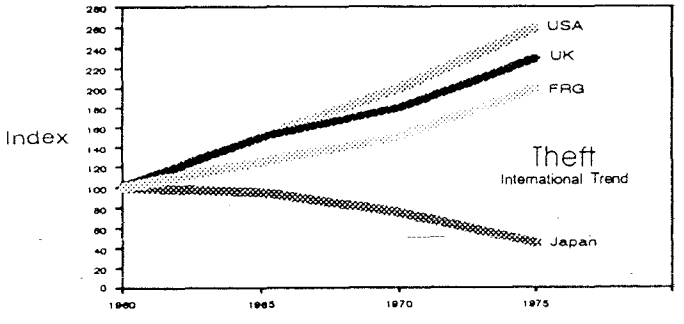


According to statistics published by the Supreme Court of Japan, in 1984 the median prison term of prisoners sentenced for all criminal offenses (combined) was 1-2 years; for homicide: 5-7 years; robbery: 3-5 years; arson: 3-5 years; rape: 2-3 years. Those who are sentenced to prison rarely serve more than one-year terms. For example, 64,990 persons were sentenced to imprisonment in 1984. However, 56 percent received suspended sentences and less than 13 percent were subjected to prison terms exceeding one year. Sentences were suspended for nearly 25 percent of those convicted of homicide or robbery, and 35 percent for those convicted of arson or rape. Only about 45 percent of all imprisoned offenders actually serve their full prison term.



Critics of this article might say the Japanese system can only work well in the context of Japanese culture. They'd say that such a scheme won't work in the U.S.

I say this: In America we put prisoners to death, and that violence is reflected back to our culture. Our society clamors for revenge, retribution, and punishment of offenders. In turn, society receives back from them rage, resentment, and more revenge. Our culture **reflects** the adversarial nature of our criminal justice system. If we were to shift our focus away from revenge and retribution, and concentrate instead on reparation and restoration of peace in the community, **those** values would, in turn, be "plowed back" into our society and offenders would respond with **respect** for the law instead of resentment.



Rather than build more prisons and continuing to devise harsher sentencing schemes, let's take a long hard look at the Japanese system and find ways to incorporate its values into our own. Let's give peace a chance.

The United States Supreme Court: Petition For Writ Of Certiorari

By Wm. Daniel M. Ravenscroft, Atty. At Law

Overview:

The United States Supreme Court is the highest court in this country. It is also the final forum for appeal in the American Judiciary.

Its jurisdiction is defined by Article III of the U.S. Constitution and by Title 28 USC, sections 1251 through 1258.

In some cases, the court can bypass the lower courts' decisions (U.S. District Courts and U.S. Courts of Appeal) by accepting or granting certiorari. Title 28, USC, section 1251.

Hearing cases on appeal from the U.S. Courts of Appeal is found under Title 28 USC, section 1254. A party can appeal a decision which holds a state statute unconstitutional or violates a federal treaty or statute. Anything can be appealed which violates the federal constitution. Other review is by way of filing a Petition for Writ of Certiorari, or commonly called "cert."

Usually, a party must appeal to the state's highest court prior to review in the U.S. Supreme Court and the court will not grant cert. **unless** a federal question is raised. Additionally, and in most cases, you will file the petition as found under Title 28 USC, Sections 1252, 1254 and 1257; U.S. Supreme Court rules 10-16.

Prisoner Litigation:

You must file your cert. petition within 60 days from the date of entry of judgment or decree in the lower courts, or U.S. Courts of Appeal. Title 28 USC, section 2101(c); U.S. Supreme Court Rules 20.1, 20.2. If the time limit has expired, you may request the court to grant you an extension, but they are not often granted **unless** you can show "good cause." U.S. Sup. Court Rule 20.1 et seq. Usually, the court will grant a 30 day extension, but only in exceptional cases. See: *U.S. Sup. Court Rules 20.1, 20.6, 29.2* and *29.3.*

The Brief:

The Petition for Writ of Certiorari should contain:

1) Questions presented for review; 2) a list of all parties to the action; 3) Tables of Authorities listing cases alphabetically and other constitutional provisions and statutes; 4) jurisdictional grounds including the date of judgment appealed from, if any rehearing was requested and/or granted and the statutory provisions conferring jurisdiction of the court itself; 5) Constitutional provisions that have an effect on your case; 6) a statement of the complete case (be brief but concise); 7) arguments as to why the U.S. Supreme Court should hear your particular case; 8) appendix; attach all orders from the lower courts and any other information pertinent to your case.

The brief should not be over 65 pages and should be typewritten on 8½x11" opaque paper, one-sided only, and bound in the upper left-hand corner. U.S. Sup. Court Rule, 39.1. Also, do not load your brief down with "flowery legal jargon."

Filing in Forma Pauperis (As a poor person):

If you indigent (poor), and wish to proceed without the payment of fees, etc., you will need to submit a Motion to Proceed In Forma Pauperis with a Supporting Affidavit, U.S. Sup. Court Rule 46.1; Title 28 USC, section 1915(a). If you do file In Forma Pauperis (IFP), you will only be required to file one brief instead of the required forty if not filing IFP. Always be sure to retain a copy for your records.

The Record:

You may then request that the record be certified and that the lower court(s) send it to the U.S. Supreme Court. Be sure to always serve a copy of your pleading on opposing counsel (the Attorney General).

Requesting Appointment of Counsel:

If the U.S. Supreme Court grants you certiorari, and you have made a timely motion for appointment of counsel, the court will appoint an attorney to represent your petition. You may file your motion for appointment of counsel at the same time you file your petition, or within 20 days from the time you have filed. **IMPORTANT NOTICE:** An indigent prisoner **cannot** act as his/her own counsel and will be appointed counsel if cert. is granted. Also, an attorney appointed to represent your civil rights case, can receive attorney's fees paid by the defendant(s). See: *Hensley vs. Eckerhart* (1983) 103 S. Ct. 1933.

Stays:

Before review by the U.S. Supreme Court, the Justices are authorized by the U.S. Sup. Court Rule 44 and Title 28 USC, section 2101(f) to grant stays of lower court decisions in exceptional cases (e.g. capital cases involving death penalty, reversal of state court convictions with broad and immediate implication for other cases). See: *Heckler vs. Blankenship* (1984) 465 U.S. 2301; *Volkswagenwerk A.G. vs. Falzon* (1983) 461 U.S. 1303; *California vs. Hamilton* (1986) 106 S. Ct. 1782, later cert. granted, *California vs. Hamilton* (1986) 106 S. Ct. 3328.

Remember, your stay request must show by clear convincing evidence that the lower court's ruling was erroneous as a matter of law and that the decision was on the merits of your case. See: *Whalen vs. Roe* (1975) 423 U.S. 1313; *Wise vs. Lipscomb* (1977) 434 U.S 1329.

Once a stay has been granted, the court may, sitting **en banc**, alter or vacate the stay. Tile 28 USC, section 1651(a); *Rosenbery vs. United States* (1953) 346 U.S. 237.

Continued on page 3

Writ of Certiorari *continued from page 2*

Remember, an application for stay **must** be accompanied by a proof of service and all parties to the action must be sent copies of your pleadings, U.S. Sup. Court Rules 28.1 and 43.2.

Service and Filing:

U.S. Sup. Court Rule 28 pertains to the proper service and filing of your documents. You can write to the Clerk of the United States Supreme Court and they will send you a copy of their rules, usually free of charge. If you are acting as an indigent (in forma pauperis), then you will need to serve only one copy, but if you are serving opposing counsel, you should serve three copies on them. Again, be sure to retain copies for yourself during the entire case.

The address of the United States Supreme Court is:

United States Supreme Court
Attention: Mr. Joseph F. Spaniol, Jr.
Clerk of the Court
1 First Street N.E.
Washington, D.C. 20543

Docketing:

Rules for docketing are found in U.S. Sup. Court Rules 12.3 (appeal) and 19.3 (certiorari). Docketing simply means that you will have to pay fees **unless** you are granted in forma pauperis status, which most prisoners will. You need only serve one copy of the docketing statement, (U.S. Sup. Court Rule 46.2) and if you have an attorney already, he/she must fill out an entry of appearance form also available from the Court Clerk.

Petitions for Re-hearings:

If the United States Supreme Court hears your case, and denies you the relief you hope for, you may file a petition for re-hearing. Under U.S. Sup. Court Rule 51.2 your re-hearing petition may be filed after a denial of certiorari. However, there must be a substantial intervening circumstance that would justify re-hearing. Re-hearings are rarely granted. U.S. Sup. Court Practice, pp. 614-631.

Remember, should you have questions as to procedure, or the rules, do write the Clerk of the Court.

While this is not an exhaustive review of the procedures in the United States Supreme Court, it will at least give you some pointers on how to proceed. Should you have any questions, feel free to write to me c/o the PRU. Good luck!

Wm. Daniel M. Ravenscroft is Executive Director of Legal Associates West, PA and has authored eight books pertaining to this type of litigation. He also serves on the Prisoners' Rights Union's Board of Directors, and is an Associate Member of California Attorneys for Criminal Justice and National Association of Criminal Defense Lawyers.

Texas Prison Officials Indicted

The manager and bookkeeper at a Texas prison textile mill were indicted April 25 in Huntsville on charges of theft, official misconduct and engaging in organized crime. Authorities said the indictments stemmed from a two-year-long scheme involving bid-rigging and kickbacks on installation and service of prison textile equipment and the theft of commercial textile equipment and parts.

From: Corrections Digest

Drug Profits Fund Prison

The Justice Department Asset Forfeiture Fund has collected more than $1.5 billion in the last six years, including $460 million in cash and property in 1990, a 28 percent increase over 1989, according to U.S. Attorney General Thornburgh.

Since the forfeiture fund began in 1985, almost $500 million has gone to prison construction. Money is also distributed to federal, state and local law enforcement agencies and the Office of National Drug Control Policy.

"It is poetic justice when a drug dealer's profits can be turned into effective weapons for law enforcement," Thornburgh said.

Mass. Corrections Policy "disaster" Says Task Force

Emphasizing that state spending on prisons has skyrocketed while taxpayer confidence in the level of public safety has plummeted, a joint Task Force of the Boston Bar Association and the Crime and Justice Foundation has warned that without radical change a criminal justice system that is "dangerously out of balance today will be out of control tomorrow."

The task Force on Justice recently released its findings in a report entitled Crisis in *Corrections and Sentencing in Massachusetts*. The report comes in the wake of the group's six-month investigation of corrections practices and policies in the Commonwealth.

"Aided and abetted by the media, we have spent years playing a high stakes game of self-deceit, bankrolled by the taxpayers of Massachusetts," said John Driscoll, Jr., president of the Boston Bar Association. "We have erroneously equated public safety with mandatory sentencing and the building of prisons. To stay on that course is to bankrupt the Commonwealth."

The report noted that spending by the Department of Corrections had increased by nearly 300 percent over the last decade.

Walla Walla 'Lifers With Hope'

Here's one for you. How many remember Walla Walla's Lifers With Hope group? Well, there's a rumor floating around they might try to get back in business. I'm sure there are some of you that remember that this organization put 600 inmates, all lifers, outside the walls to work. They had great success in many of their endeavors. Could it be that they are interested in trying to get guys out of here after they have completed their 13.4 mandatory? It is a real bummer to keep hearing "We'll see you again in two years" from the Board. One of the Lifers With Hope program goals is to see that those lifers who have completed their mandatory sentence, in essence the 20 years they had been sentenced to by the court, make a smooth transition back into society. Their sole purpose in creating and developing this concept is to place those long term lifers back into society with a minimum amount of stress and conflict. This transitional phase consists of lifers living, working, studying and participating in various therapeutic programs once they are released. Anyone that is interested or may have some input on this subject, please write to Warren Halverson #024618 or Dawud H. Malik #622989, P.O. Box 777, Monroe, WA 98272.

Legal Mail May Not Be Read

A Florida prisoner filed suit under § 1983 after a letter from his attorney, addressed to him and marked "legal mail," was opened and read in his presence by a prison guard. The guard confiscated the letter and an attached newspaper clipping. The letter was returned to the prisoner two weeks later.

Prison officials lost the case at trial and on their appeal the 11th Circuit Court of Appeals upheld the juries verdict finding that the prisoners right to unread and uncensored attorney client mail was well established. See: *Lemon vs Dugger*, 931 F.2d 1465 (11th Cir. 1991).

Prisoners Entitled To Exculpatory Evidence In Disciplinary Hearings

Four prisoners at the U.S. Penitentiary at Marion, Il., were accused of murdering another prisoner. They were infracted and found "guilty" of the murder at a prison disciplinary hearing. Prior to the hearing they had requested the reports and interviews with staff and prisoners concerning the death in order to prepare their defense. Their request was denied. They filed a petition for habeas corpus in federal court and the district court denied their habeas corpus, holding there was sufficient evidence to support the "guilty" finding.

The Court of Appeals for the Seventh Circuit reversed and remanded as it's prior rulings require disclosure of exculpatory evidence for prisoners accused of rules violations in prison disciplinary hearings. The Court of Appeals found that the district judge had erred by failing to review the entire file in camera to determine if any exculpatory evidence did in fact exist or not. The court also held that a prisoner does not waive his opportunity to receive exculpatory evidence solely because he exercises his option of not having a staff adviser. See: *Campbell vs Henman*, 931 F.2d 1212 (7th Cir. 1991).

Prisoners Must Be Fed

Alvin Cooper was a pre-trial detainee in Texas and filed a § 1983 suit claiming that jail guards were refusing to feed him. The officials did not deny the allegation but claimed Cooper wasn't fed because he refused to appear fully dressed at all meals. The district court dismissed the suit for failure to state a claim on which relief could be granted under Fed.R.Civ.P. 12 (b)(6).

The Court of Appeals for the Fifth Circuit vacated and remanded the case finding that Cooper did state a claim for violation of his due process rights even if there was a regulation mandating prisoners be fully clothed before they were fed. The court found that depriving prisoners of food is a form of corporal punishment strictly limited by the Eighth Amendments ban on cruel and unusual punishment.

The court also ruled the jail officials were not entitled to qualified immunity because it had long been the law in the Fifth Circuit that prisoners are entitled to adequate food. See: *Cooper vs Sheriff*, Lubbock County, Texas, 929 F.2d 1078 (5th Cir. 1991).

Informants Must Be Reliable

Albert Taylor is an Oklahoma state prisoner who filed a § 1983 suit claiming his right to due process was violated when a prison disciplinary committee found him guilty of participating in a riot based on a statement from a confidential informant. The district court dismissed the complaint, later converted to a habeas corpus action, as being frivolous, finding that Taylor received all process he was due.

The Court of Appeals for the Tenth Circuit reversed and remanded finding that Taylor stated a cause of action because there was nothing in the record that indicated the reliability of the informants. At pages 701-702 the court examines the holdings of several circuits with regards to how the reliability of informants must be established. Without establishing the informants reliability, the court ruled, no weight should be given to their statements. See: *Taylor vs Wallace*, 931 F.2d 698 (10th Cir. 1991).

Mail Rejection Not Upheld

A Michigan prisoner sent another Michigan prisoner an educational brochure on how to study to be a paralegal. Michigan DOC officials rejected the brochure claiming prison rules prohibited "contractual agreements."

The district court ruled the brochure was entitled to First Amendment protection and found no security reason to justify withholding the brochure. The judge found the prison officials reasoning in rejecting the brochure to be "far fetched" and "wholly arbitrary." The court ordered the brochure delivered to the plaintiff and issued an injunction prohibiting prison officials from rejecting first class mail with information on correspondence schools. See: *Eckford El vs Toombs*, 760 F. Supp 1267 (WD MI 1991).

Prison Visitors May Not Be Searched Without Probable Cause

The Sixth Circuit Court of Appeals has ruled that Tennessee prison regulations give Tennessee prisoners a due process liberty interest in prison visitation. The Court ruled that removing the visitation right in retaliation for the visitor refusing to submit to an illegal strip search, as a condition to visit the prisoner, was unconstitutional. See: *Long vs Norris*, 929 F.2d 1111 (6th Cir. 1991).

Denial Of Attorney Listings Illegal

A Missouri prisoner in a control unit was denied telephone yellow pages and photocopies of telephone listings of attorneys from city phone books sent to him by family and friends. The district court found that the blanket policy of denying prisoners access to phone book pages listing attorneys violated the prisoners right to counsel and the right to meaningful access to the courts. But the court found the prison officials were entitled to qualified immunity for their actions.

On appeal the 8th Circuit Court of Appeals affirmed the district court's ruling that the policy was unlawful and that the officials were entitled to qualified immunity. See: *Foster v. Basham*, 932 F.2d 732 (8th Cir. 1991).

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Grievance System Does Not Create Liberty Interest

A federal prisoner brought a *Bivens* action against the prison warden and case manager for denying him access to the prison grievance system. The district court granted summary judgment to prison officials and the court of appeals affirmed.

The court of appeals for the 8th Circuit ruled that prison regulations providing for an administrative remedy do not in and of themselves create a liberty interest in access to that procedure when the claim underlying the grievance involves a constitutional right. The prisoners right of access to the courts is not compromised by the prison officials refusal to entertain the grievance and the prisoner can file suit directly in court. See: *Flick v. Alba*, 932 F.2D 729 (8th Cir. 1991).

Magistrates May Hear Prison Cases

A unanimous Supreme Court ruled that 28 U.S.C. § 636 (b) (1) (B) authorizes the nonconsensual referral to Magistrates for hearing and recommended findings of all prisoner petitions challenging conditions of confinement. This ruling allows federal judges to refer to magistrates all prisoners pertitions for habeas relief or relief for damages and injunctive relief under 42 U.S.C. § 1983. See: *McCarthy v. Bronson*, ___ US ___, 111 S. Ct. 1737 (1991).

From The Editor

By Paul Wright

Welcome to another issue of *PLN*. As I write this I just saw on the news that Thurgood Marshall, the first and only black person to sit on the U.S. Supreme Court, is resigning due to age and health reasons. Mr. Marshall was always a friend of prisoners and consistently opposed the death penalty and the expansion of police and government powers. He was the last Supreme Court justice appointed by a democratic president in 1967. With his resignation the right wingers will have a solid majority in the Supreme Court and we can expect to see a greater and faster erosion of prisoners rights and the rights of citizens before the government onslaught under guise of it's "war on drugs."

Mr. Marshall's resignation only dramatizes a trend that began almost ten years ago when Reagan began appointing justices to the Supreme Court. It is ironic that nowadays justices appointed by Nixon and Ford are viewed as "moderates" and "liberals." With decision after decision coming out of the Supreme Court limiting the rights of workers, women, prisoners, the poor and disadvantaged, citizens accused of illegal actions, etc., it is becoming obvious that the dire predictions made when Scalia, O'Connor, Kennedy and Souter were appointed to the Court by Reagan and Bush are coming true. The right wing in this country accused the liberal Warren Court of being "activist," yet we see the Rehnquist court running post haste to limit prisoners access to habeas corpus review and to speed the imposition of the death penalty, limit womens access to abortions, etc.

In a way I think that the right wing trend of the Supreme Court will restore it to it's historic tradition. The Earl Warren court that issued such historic rulings that struck down discrimination in the classroom and public facilities, the right to sue for violation of civil rights, the right of criminal defendants to a lawyer, etc., was something of an aberration. Afterall, it was the Supreme Court that had upheld slavery, internment of Japanese Americans during World War II was legal, etc. For centuries the U.S. Constitution was looked at but not enforced for the poor and underprivileged, it looks like we're heading back to those "good old days." It turns out that just as quickly as the Warren court issued those landmark rulings asserting constitutional rights, the Rehnquist court will now undo them.

What has gotten less attention than the Supreme Court is the large number of judges that have been appointed to lifetime terms by Reagan and Bush, nearly 75% of the federal judiciary, nearly all of them rich, white and male. While congress putters about trying to pass a "civil rights" bill to undercut recent Supreme Court decisions limiting employment discrimination suits by women and minorities, little thought is given to the fact that it will be these judges, most of whom are hostile to these very laws, that will be called on to interpret and enforce these laws, if they ever get passed.

On another note, 127 House is putting together a benefit tape to help *PLN*. They are looking for electronic, industrial collage, Punk/HC and spoken pieces on Type II or better cassettes (enclose an SASE if you need it back) and information about the contributor. If you know any bands or such that might be interested let them know about this. The deadline for contributions is Sept. 1, 1991, and all profits from the tape sales, to be on sale Oct. 1, 1991, will go to *PLN* to keep us publishing. For more information write: 127 House, P.O. Box 11481, Knoxville, TN 37933-1061.

We still encourage our readers, especially those in prison or who make purchasing orders for groups and such, to see about getting their organization, library, etc., to subscribe to *PLN* at our institutional subscription rate of $60.00 per year.

To keep on publishing *PLN* we need donations and contributions. We are supported entirely by our readers and we hope that as we meet your needs you'll help us meet ours. To that end we need donations of money and new, unused postage stamps. Even a small amount goes a long way. If you're in prison and can't afford a donation yourself encourage your friends or family to send a donation on your behalf. After you read *PLN* don't throw it away or hide it, pass it on so more folks will get to know us. Enjoy this issue and let us know what you think of it.

If your mailing label says "final issue" this means we don't have a record of your having sent us a donation to cover the cost of your subscription. It costs us 69¢ just to print and mail each copy of *PLN*. That doesn't include additional expenses. We need to break even to keep on publishing and in an effort to do this we periodically trim our mailing list of people who haven't made any donations. If this is your last issue, hurry and send a donation to the Florida publisher so you won't miss any issues.

Justice For Jimmy Haynes???

By John Perotti

On February 9, 1984, Jimmy Haynes, a black prisoner, was beaten and then murdered by 12 white guards at the Southern Ohio Correctional Facility (SOCF) at Lucasville, Ohio. The cause of death was a crushed windpipe after one guard held a PR-24 stick behind his neck and another jumped on this throat. This set the stage for a series of actions due to the tensions. A month later, after eight guards formed in front of my cell and ran in to assassinate me, I disarmed one and stabbed him, sending the rest running. Three more stabbings of guards occurred within the next few months which sparked investigations by the media and legislature into guard attacks on prisoners – resulting in less attacks.

Mrs. Haynes sued the guards involved in killing her son. The state argued qualified immunity all the way to the Sixth Circuit Court of Appeals, which refused to sustain this argument and sent the case back to the U.S. District Court in Cincinnati for trial.

The trial started on April 15, 1991, Marc Mazibou, the attorney who represented the art director of the Cincinnati Contemporary Arts Center (who was indicted for "obscenity" for exhibiting the Mapplethorpe exhibition) represented Mrs. Haynes. Assistant Attorney General Allen Adler represented the guards. Mr. Adler claimed that the guards only used reasonable force to subdue Jimmy and that a breathing tube improperly installed by Scioto County paramedics was the real cause of death. Typical state propaganda.

Bernice "Ma" Bell, a former nurse at SOCF was called to the stand by Mrs. Haynes' counsel. Ma Bell testified that on February 7, 1984, two days before the murder, Jimmy Haynes told her "Miss Ma Bell...you just don't understand. They're (the guards) going to kill me." Two days later they did.

The trial lasted for two weeks and the jury deliberated for two days before returning with a verdict against three of the guards for a total of $1,022,000.00 in damages. $250,000.00 of the verdict is for punitive damages, which the guards must pay themselves since Ohio law does not indemnify punitive damages, only compensatory.

State Representative Louis Stakes, who pressed hard for indictment of the guards at the time of the incident stated: "The one million does not adequately compensate for the life of this human being. However, there is some measure of justice through this verdict. This was a vicious, calculated act on the part of these officers who deliberately took this man's life."

The guards were never indicted, even though a special prosecutor was appointed to present the case to the Scioto County grand jury, because there were SOCF prison guards on that grand jury and Scioto County prosecutor Lynn Grundaus (friend of all prisoncrats) refused to convene a new grand jury.

Of course, the state plans to appeal what they say are "many errors and inconsistencies" in the verdict.

Was justice served for Jimmy Haynes? No amount of money can replace a fallen brother. All who knew him loved him. Hopefully a message will be sent to sadistic prison guards to think twice before practicing their sadism on our brothers. Our love, sorrow and solidarity to Mrs. Haynes.

PLN Banned In France

By Paul Wright

PLN reader Jean Marc Rouillain, a political prisoner in France, has written and informed us that the April, 1991, issue of *PLN* (which just happened to have his article about the worsening prison conditions in France and the hungerstrike he and other prisoners were on as a result of this) had been banned from the French prison system as being "subversive." Jean Marc received all 11 issues of *PLN* prior to this without incident, but then, none of those had articles about abuses in the French prison system.

It is ironic that this incident of censorship should take place while the French are celebrating the bicentennial of the French Revolution with it's slogan of "Liberty, Equality and Fraternity" which was marked by the storming of the Bastille, a prison in Paris. These actions by French prisoncrats fall into the pattern we have already observed: as long as it's other prisoncrats being exposed or written about everything is fine, as soon as the limelight of publicity from *PLN* falls on them though the publication immediately becomes "subversive," a "threat to security," "inflammatory," etc. Of course the abuses being reported are invariably well known to the captives within that particular prison so the purpose isn't so much to keep them from knowing what is going on so much as to make them feel isolated and forgotten.

The French judicial system does not allow for the challenging of censorship by prisoncrats so French *PLN* readers in the gulag are left with no legal or judicial recourse. French prison officials do not dispute the truth or accuracy of Jean Marc's article but just that this and all future issues of *PLN* are now "subversive."

Reviews

PWA-RAG is a quarterly newsletter edited and published by prisoner James Magner. The title is an abbreviation for "Prisoners With AIDS-Rights Advocacy Group." It's primary purpose is to advocate for the rights of prisoners with AIDS, AIDS related Complex (ARC) and that are HIV positive. They offer educational materials on AIDS, pen pal referrals and lobbying of U.S. legislators to improve treatment and care of prisoners in American prisons. Starting with their June issue PWA-RAG should be available in Spanish and French as well as English.

The last copy of PWA-RAG is 30 pages long and filled with information on AIDS, it's effects on prisoners, health care in prisons, resources for prisoners and letters to the editor. PWA-RAG subsists on donations so send what you can afford to receive it. Write: PWA-RAG, P.O. Box 2161, Jonesboro, GA 30237.

JERICHO NEWSLETTER is a monthly newsletter published by prisoner Micheal Stephens, now in Arizona. The last issue is 5 pages long with articles on private prisons, letters to the editor, a poetry page and pen pal ads. For future editions Micheal is looking for writers to contribute to a legal news page and to a page for women prisoners. Subscription rates are $7.00 a year for prisoners, $10.00 a year for others. Write: Micheal Stephens, P.O. Box B-82951, Florence, AZ 85232.

JETSAM is a quarterly newsletter published by Idaho prisoner James Black. It's a personal journal with short

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stories and reviews. Available for a donation. Write to: James Black, #27721, P.O. Box 8288, Boise, ID 83707.

FACTSHEET FIVE is a bi-monthly publication that publishes reviews of magazines, videos, tapes and even software (yes, *PLN* is reviewed on a regular basis as well). Probably the best guide to the alternative press available. Free to prisoners, $23.00 for an 8 issue (1 year) subscription for others. Write: Factsheet Five, 6 Arizona Ave., Rensselaer, NY 12144-4502.

WALKIN' STEEL is "a newsletter devoted to the abolition of control unit prisons" published by the Committee to End the Marion Lockdown. Their premiere issue (it will be quarterly) has updates on the Federal Bureau of Prisons (BOP) plan to build it's new control unit prison in Florence, Colorado, to replace the infamous gulag at Marion, Illinois, an analysis of the reason behind the flourishing of control unit prisons, a petition to stop control unit prisons in Marion and anywhere else, suggested questions to send to your congressperson and the BOP about control unit prisons, and information on anti-control unit groups. CEML needs donations, articles, information from prisoners in control units in state and federal prisons and help distributing their newsletter. They also have other resources available such as video's, booklets, etc. For more information write: CEML, P.O. Box 578172, Chicago, IL 60657-8172.

CITIZENS FOR JUSTICE is a group in Bellingham, Washington that publishes a bi-monthly newsletter that covers cases of innocent people in prison as well as human and civil rights abuses in prison. To receive their newsletter, please send a donation to: Citizens For Justice, 2201 Henry St., Bellingham, WA 98225.

THE CALIFORNIA PRISONER is published by the Prisoner Rights Union on a bi-monthly basis. It is a comprehensive publication aimed primarily at California prisoners in that it covers legislative developments, judicial rulings, etc., that affect mainly California prisoners, but it also has regular columns on health in prison, support for wives and family members of prisoners, AIDS in prison, and many other topics that are general to all prisons across the U.S. The June 1991 issue is their 20th anniversary issue and charts the developments of the PRU in that time. *The California Prisoner* is free to California prisoners, $5.00 a year to out of state prisoners, and $20.00 a year for everyone else. The PRU also publishes an excellent "Resource Guide" for prisoners listing legal aid, judicial, self help and many other groups and organizations that may interest prisoners. The "Resource Guide" costs $5.00. Write: PRU, 1909 Sixth Ave., Sacramento, CA 95814.

THE ANTI-WARRIOR is a brand new "newsletter of military dissension and resistance." It is published by current and former soldiers and marines who resisted and opposed the gulf war. Many soldiers who resisted the war and who filed for conscientious objector status have been convicted of various charges and are now languishing in brigs and prisons. This newsletter updates their situation and has a lot of information on calling for the release of these military prisoners, as well as anti-militaristic news and organizing within the military. This is their first issue and they need donations to keep going. The gulf war is over for now but the struggle against militarism is ongoing, those who resisted are still paying the price for their resistance and need support now. Write: The Anti-WARrior, 48 Shattuck Sq., Box 129, Berkeley, CA 97404.

ARM THE MASSES is a monthly tabloid by the December 12th Movement. It advocates socialism and black liberation. Recent issues have highlighted the situation of political prisoners here in the U.S., developments in South Africa, and Marxist theory and practice here in the U.S. and elsewhere. Only $6.00 per year and well worth it. Write: ATM 28 Vessey St.,, Suite 2298, New York, NY 10007.

A LOOK AT REALITY is a quarterly tabloid by the Quixote Center. The May issue focuses on police brutality and brutality within the U.S. prison system in considerable detail. It also contains an article on the proliferation of control units within prisons across the U.S. and the struggle to stop their spread, and an update on the struggle for justice by Mumia Abu Jamal on death row in Pennsylvania accused of killing a cop. Bulk issues of this tabloid are available for distribution. Write: Quixote Center, P.O. Box 5206, Hyattsville, MD 20782.

The Ex Post Facto Clause and Washington's Parole Board

By Ed Mead

Akins and another prisoner filed a civil rights complaint in federal court (pursuant to 42 U.S.C. § 1983) alleging that the Georgia parole board's application of recently adopted rules to their cases violated their constitutional rights, specifically their substantive due process rights under the fourteenth amendment and the ex post facto clause. The district court denied relief and the prisoners appealed. The U.S. Court of Appeals for the Eleventh Circuit reversed, *Akin vs Snow*, 922 F.2d 1558 (11 Cir. 1991), holding that the denial of an annual parole reconsideration hearing, resulting from a new board rule that granted such reviews only every eight years, violated the ex post facto clause with respect to inmates who, when their crimes were committed, were entitled to annual reconsideration hearings.

The big question in the case was whether the rule change was substantive or merely procedural, a distinction that can be quite elusive. The court decided that "[t]he elimination of a parole reconsideration hearing does not simply alter the methods employed to determine whether an otherwise eligible inmate is granted parole. A parole consideration hearing is ... an important component of a prisoners parole eligibility. The change is a substantive one that effectively disadvantages an inmate."

The law on this subject is less clear here in the Ninth Circuit. In the case of *Watson v. Estelle*, 859 F.2d 105 (9 Cir. 1988), the court adopted a position that was pretty much on all fours with the *Akins* holding. The mandate in the first *Watson* decision was subsequently recalled, in *Watson v. Estelle*, 886 F.2d 1093 (9 Cir. 1989), although for reasons that would not relate to an ex post facto challenge. In other words, *Watson* II is distinguishable because the parole board rule being attacked as an ex post facto law did not exist at the time Watson committed his crime.

While *Watson* is the leading federal ruling in this circuit, there is still the question of state common (case) law on the whole ex post facto issue in connection with the parole board here in Washington. The lead case in this regard is *Addleman v. Board*, 107 Wn.2d 503, 730 P.2d 1327 (1986). The

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Ex Post Facto Clause *continued from page 4*

Addleman case did not address a change in board rules, but rather the elimination of the board altogether. The court held that the ex post facto claim was not "ripe" for decision and, in any case, was cured by statutory amendment. There is nothin ing current state law that has addressed the ex post facto application of newly adopted parole board rules. This would be what the courts term a "question of first impression" in this jurisdiction (an issue being ruled on for the first time).

Do Washington prisoners have an ex post facto claim against the parole board? The answer would depend in part on whether the rules being applied by the board are more harsh than those that existed when the original offense was committed. To make this determination you would need a copy of the old board rules, the ones in effect when your crime took place. Getting your hands on their old rules is not an easy task. While work in this area is ongoing, a set of rules that were in effect in 1976 was obtained from the University of Washington's law library. These offer hope for many pre-SRA offenders serving long sentences.

Old board rule 6.040 defined a reconsideration hearing as: "Any hearing, meeting or interview...conducted by the Board for the purpose of reviewing such person's duration of confinement shall be known as a reconsideration meeting. Reconsideration meetings are divided into two types: Progress Meetings and Parole Meetings." In other words, any hearing other than a Disciplinary Hearing was a reconsideration hearing. Rule 6.050 stated that: "A Progress Meeting is a reconsideration meeting scheduled and conducted by the Board with the convicted person present for the purpose of reviewing such person duration of confinement. Consideration may be given for reduction of minimum term, an increase of minimum term, or for parole of the convicted person." What this means, is that if the board's rules are to be considered as "laws" for ex post facto purposes (in accordance with the logic of *Akins supra*), then prisoners who committed their offenses at the time these rules were in effect are still entitled to the benefits they contained.

This would at least entitle people to regular in-person hearings with the board. Pursuant to old board Rule 6.130, the board could conduct a progress review without an in-person meeting, but, "[i]f such person, after receiving the Board's decision, requests a meeting with the Board, such request shall be granted." As the reader can see, these old rules provided many benefits that have since been stripped away by subsequent amendments, primarily a right to regular parole consideration and to demand in-person meetings with the parole board.

The old rules also listed the factors to be considered prior to granting parole to old guideline people, and these too provided benefits that conflict with recent changes in board rules and even legislative enactments. In this latter category, for example, RCW 9.95.009(2) was amended to make "public saftey" the highest priority when making release decisions for old guideline prisoners. This was not, however, a priority when the old rules were in effect. So there is a lot of room here for making an ex post facto challenge against these latest series of changes in board rules and this state's laws.

Prisoner legal workers here at the Reformatory will be mounting a *Akins* type of challenge before too long. Occasional reports on the progress of that litigation will be printed here in the *PLN* as events warrant. If you've something to contribute to this effort, like additional board rules from the late 1970s or early 1980s, then be sure to let newsletter workers know so copies can be obtained.

California Prison Construction

Ruth Cashmere

Recently studies have shown that the United States has the world's highest incarceration rate. The United States has 426 prisoners per 100,000 populuation.

Over the past 10 years, the state of California has experienced the greatest increase in state prison population surpassing others throughout the country. The California inmate population in 1979 was 22,500, and has dramatically grown to 100,000.

In 1988 the California Department of Corrections listed an average incarceration rate of 177 inmates per week. California currently has 34,000 more state prisoners than New York, the second largest system in the country.

As California schools have experienced severe budget cuts, the 100,000th inmate was locked into a system which is increasing more rapidly than any other state program. California has a $4.5 billion prison construction budget, with seven new prisons planned. In 1986, the previous governor of the state of California proposed an aggressive program to build more prisons. It was believed by this administration that the solution for an alleged increase in crime was to incarcerate more of the population. Recommendations to increase alternative sentencing programs and to develop community correctional facilities were not met with a great deal of support. A trend, unfortunately reflected throughout most of the country.

A minimum security facility recently built in the rural area of Avenal, California has brought an increase of $200,000 in state revenue per year, to an economically disadvantaged town. Other central valley towns such as Corcoran, Madera and Wasco have built both minimum and maximum security facilities as well. Northern California has followed these examples and constructed a maximum security facility in Crescent City, too. Prison construction creates jobs and has become "big business in the state of California."

The Blue Ribbon Commission Report on inmate population management from Sacramento, California has made several findings and recommendations to ease prison and jail overcrowding in California. According to this report changes must be made in correctional policies and practices. One of the many recommendations by the commission is that the legislature adopt a Community Corrections Act to provide funds to localities to expand such community based programs as electronic surveillance, work furlough, mother/child programs, community service, substance abuse prevention, restitution centers and non-residential treatment programs.

I have received *PLN's* April and June issues. The professional quality of the publication is very impressive and the contents are interesting and useful. However, I have a problem with the article headed "More Federal Money For Prisons" on page 4 of the April issue. It is unclear whether the article is a statement of the "Justice" Department's position, or an endorsement of this position by the *PLN*.

Specifically, the fourth paragraph, which has no quotation marks or attributions, appears to give uncritical support to the government's propoganda line which identifies "drug users" as a social scapegoat and calls for their "punishment." This plays into the hands of the military-industrial elitist cabal that is pushing U.S. society rapidly toward a fascist police state.

In view of the poverty, homelessness, lack of medical services, infant mortality, etc., etc., that are plaguing U.S. cities, it is bizarre to state that drug use is "the number one domestic problem facing our nation today," as the federal agency is quoted. An objective analysis will show that the harmful social effects of drug use are almost totally attributable to the prohibition laws. These laws orginated as tools of racist repression and have consistently been used as weapons against minority communities and political dissidents.

The government's hypocritical involvement policies work on two levels. Covert CIA involvement in drug trafficking has been clearly documented from the 1960s, when heroin was imported from the "golden triangle" during the "secret" military incursions into Laos and Cambodia, through the 1980s, when cocaine was imported to aid covert funding of the Nicaragua-Contra" war. (See *The Politics of Heroin* by Alfred W. McCoy, and the books *Out of Control: The Story of the Contra-Drug Connection;* also *Cocaine Politics* by P.D. Scott and J. Marshall; and *Drug Wars* by Johnathan Marshall. All of these are available from the Christie Institute, 1324 N. Capitol St. N.W., Washington D.C. 20002.) The drugs that flood the illicit market as a result of these covert operations is then used to destabilize targeted racial and social classes, and to fan the flames of public hysteria, preparing the people for successive rounds of ever more repressive laws, decimating civil liberties and strengthening the police powers of the state.

In my view, a principled response to the "drug crisis" must begin with a demand for repeal of the prohibition laws. This will remove the excessive profits from the drug trade. Drug profiteers, whether they belong to street gangs or covert government agencies, will be out of business. A public education campaign can reveal the true dangers of drug use – including alcohol and tobacco, the two drugs responsible for more death and illness than any of the illicit ones. Individuals will be able to make informed choices and ingest the substances of their choice – a private decision that is beyond the legitimate interests of police, courts and legislators.

Dale R. Gowin, 91-B-0209
P.O. Box 500, Elmira, NY 14902

[Editor's Note: We agree with you. One of the weaknesses of the *PLN* is that we often reprint material straight from bourgeois publications. These are generally news items that we feel prisoners should know about. While it would be nice to take each article and place it on the proper class context, we just don't have the time to space to do so. We will, however, work at doing a better job of meeting the political needs of our readers, most of whom are not very familiar with the government's involvement in drug dealing. Indeed, in light of the self-righteous statements of government leaders about foreign drug smugglers, it would be nice to have an article detailing how Britain and America fought a war with China so as to preserve their "right" to import opium into that country. Do you feel up to the task?]

Ohio's Notarization Blues

A fellow prisoner introduced me to *PLN* a couple of days ago (he let me borrow several back issues), and I want to commend you for all the good work you're doing. You've got a good newsletter here...

...here in the state of Ohio, corrections administrators are so confident that they will not be held accountable for their actions, that last year the staff in this prison issued a complaint (grievance) resolution stating that the staff members who are vested with the responsibility for providing notary services for prisoners "will not notarize any documents concerning civil rights...because it goes against what the Department is hoping to accomplish." Ha ha. Boy, they've got some live ones here!

L.R.R., Lucasville, OH

Be A Rat Or Else!

This all started back in November 1986, a couple of weeks after the decision in *Toussaint v. McCarthy,* 801 F.2d 1080 (9 Cir. 1986) [prisoners can be placed on administrative segregation status for little or no reason]. Myself and a couple hundred other people were transferred from the general population of old Folsom to ad seg at the new Folsom. I nor anyone else were actually given a rules violation report, but we were all accused of bascially the same thing – gang association. Any by virtue of that association were guilty of all the serious things that usually takes place in prisons. All based on informant information. I went to a classifications committee twice at new Folsom. The second time I went I was told that if I would tell all I knew about prison gangs, and my involvement and submit to a polygraph test, I could go back to the population. They actually put this in chrono (report).

I went to the parole board in 1987 and the board told me I could not participate in any programs unless I would "debrief" them on all I knew and took this polygraph test. Otherwise I would never get out of the hole and I would never get out of prison because I could not go the school, take a trade, get some therapy, go to A.A. or N.A., etc.

So it all comes down to the fact that if I'm unwilling to become a cooperating prisoner then I will suffer in the Pelican Bay Control Unit forever.

I filled a civil suit (pursuant to 42 U.S.C.) § 1983 in federal court back in 1987. I have been vigorously litigating this issue ever since. I had a trial date in February of this year, but the U.S. Magistrate has ruled this is a class action and must be handled via habeas corpus. I'm already back in federal court on habeas but I'm also working on my § damage claim.

J.P., Pelican Bay, CA

Attention European Readers

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The Prison/C..munity Alliance (P/CA) is a group of Washington state prisoners and concerned citizens whose goal is to abolish the Washington state Indeterminate Sentence Review Board, AKA the parole board, and bring all indeterminate sentence prisoners under the new SRA guidelines. The courts and the legislature are unwilling to abolish the parole board, so the way the P/CA is focusing on doing this is the ballot initiative, to let the voters of the State of Washington decide whether or not they want the parole board.

P/CA does not need money, they need people willing to get involved and make their voices heard. PLN will cover new developments as they occur. To get involved or for more information please contact: P/CA, P.O. Box 276, Kent, WA 98035.

Prisoners' Legal News
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Prisoners' Legal News

Working to Extend Democracy to All

Vol. 2, No. 9 September 1991

Remembering Attica: Twenty Years Later

By Ed Mead

On September 13, 1978, prisoners at Walla Walla celebrated Attica Day by holding a sparsely attended memorial talent show in the prison's auditorium. On September 13, 1979, the Washington Coalition Against Prisons (WaCAP) braved heavy rain to stage a rally in Olympia to protest overcrowding and other oppressive aspects of Washington's prison system. On September 13, 1980, the annual Attica Day event in Washington state took the form of a conference in Seattle on prison work. There has not been an Attica Day celebration in this state since.

This September 13th marks the 20th anniversary of the Attica uprising. It is a good time for prisoners to ask, "Why an Attica Day?" There are several good reasons. First, it is important for prisoners still working for progress to honor their comrades who have fallen in the struggle for justice. Secondly, it is essential for us on the inside to understand the lessons of Attica, both positive and negative, so that such loses can be minimized in the future. Thirdly, the uprising at Attica represents a symbol of resistance and the birth of a greater prisoners' movement.

To appreciate the events at Attica it is first necessary to put them in proper political and historical context. Today many prisoners view justice as nothing more than a cop's bullet in the back or as endless years of meaningless confinement. That's bourgeois justice. What the brothers at Attica were fighting for is proletarian justice, which is an end to the system that perpetuates the destructive cycle that imprisonment represents. They wanted us to see their rebellion as one battle in a continuous struggle waged on an international level, not just one isolated incident.

The Attica uprising was a spontaneous event. It happened because the material conditions for resistance were ripe. There had been political study groups in most of the major wings, and prisoner consciousness had been developed to a point where the entire population could act as a single fist. Sam Melville, an Attica prisoner, had been publishing a little underground paper he wrote by hand, with as many carbon copies as he could make. It was called the *Iced Pig*.

Well thought out demands had been drawn up and submitted to the state's corrections bureaucracy for resolution. When no action was taken by officials, prisoners backed their demands with a ten-day peaceful work strike. The strike ended with a shopping cart full of pious promises that were never honored. Then, on August 21, 1971, when George Jackson was murdered at San Quentin, Attica cons wore black armbands and boycotted the messhall for a day. All of these actions reflected a high degree of political unity.

On September 9, 1971, less than a month after the boycott, a fight broke out in one of the wings. Through an unusual combination of circumstances, such as prisoners inadvertently gaining access to an important gate, the fight erupted into a riot and takeover of sections of the prison, including D Yard. Even though the rebellion was not planned, D Yard prisoners quickly and efficiently organized themselves into a commune. They had no weapons to speak of (a few homemade shanks) and their level of outside support was negligible.

The rebelling prisoners seemed to be aware of their weaknesses, as they immediately called upon cons in other New York prisons and the progressive community on the outside to back their play. This call was made through the mass media, the presence of which was a precondition to negotiations. Another precondition was the formation of an observer team selected by the prisoners. These and other threshold demands indicate how conscious the prisoners were of their vulnerability; they also reflected a deep level of understanding as to what was necessary to overcome their weaknesses.

The observer team consisted of liberals like Tom Wicker of the *New York Times* and radicals from leftist political organizations, like Jesse Jackson. While the media and observer team were successful in terms of winning a substantial amount of public opinion in favor of the prisoners, the men in D Yard needed more than moral support. No other prisons went down. And the left did nothing to support the brothers. To top it all off, when push came to shove, when the state told the observer team to clear the yard so they could launch their attack on the prisoners, these observers, the same men who had been championing the cause of the prisoners in the press, left the yard and thus exposed the brothers to the guns of the state. They were slaughtered at the hands of state police and prison guards behind those guns. Forty-three people were killed.

Of course ultimate responsibility for the massacre at Attica belongs in the lap of then governor Rockefeller, whose whole family maintains its position in the ruling class by the murder (e.g., the 1914 Ludowe, Colorado, massacre of miners) and exploitation of poor and working people. Even so, Rockefeller would have been hard pressed to order the attack if those claiming to be supportive of the struggle had actively been so. Besides leaving the prisoners vulnerable by not joining them in the yard, the radicals and left leaders failed to mobilize the extensive progressive community in New York City. These people and the loved

Continued on page 2

Remembering Attica *continued from page 1*

ones of the men inside could have surrounded the prison in a non-violent vigil until the conflict was resolved. Moreover, due to a long and deeply entrenched tradition of opportunism, the left did not possess the capacity to defend people like the Attica Brothers with all levels of support. Given these weaknesses, it is easy to see why Rockefeller thought he could get away with ordering the September 13th military attack on the unarmed prisoners.

The tactic implemented by the prisoners of Attica, although it exposed the naked violence of the state to a complacent public and raised prisoners consciousness to a higher level, was a political defeat – and a very expensive one at that. This is not to say that D Yard prisoners were all wrong. There were both positive and negative aspects to the uprising. In order to glean the lessons, however, we must examine the negative, the weaknesses, in an effort to transform weakness into strength. That's what the struggle is all about; fight, learn, fight some more, learn some more, and so on until victory.

One central weakness of Attica stands out above all others: the general absence of prisoner organization until after the uprising was an accomplished fact. Of course people sometimes erupt into spontaneous and violent resistance to their oppressors – who can blame them. But if the object is to win, as it must be, then political action should be organized and disciplined and guided by advanced political theory. And when these things exist, it is not necessary to resort to such self-destructive tactics as those used at Attica.

The high degree of political consciousness possessed by the Attica rebels is reflected in their demand for transportation to a non-imperialist country. Yet either because of a lack of patience or allowing unfolding events to get ahead of them, they did not build any formal organization prior to the revolt. With the necessary organization and theory, they could have organized themselves, then other state institutions, developed trained outside support networks, and otherwise set the stage for a long term mass struggle.

Naturally it is easier to view past events from the comfortable perspective of hindsight than it is to actually participate in a complex experience like the uprising at Attica. Nothing said here should be construed to detract from the strong spirit of the comrades who made those terrible sacrifices in D Yard. But since Attica did happen, future generations of prisoners can learn from the experience. The Attica cons went too far too fast; moving without taking the time to build a broad base of support. The state's response was to ruthlessly smash these budding efforts to resist, a job that was made easier through the exploitation of prisoner weaknesses.

As mentioned earlier, this September 13th marks the twentieth year since the massacre at Attica, an anniversary that should be honored by prisoners everywhere. These twenty years have not been good ones in terms of progress for prisoners. Dozens of prisons have experienced riots and hostage takings during this period; most of which ended in the loss of prisoner lives (either by their captors or, as in the case of New Mexico, at the hands of their fellow prisoners). There is little to indicate that the lessons of Attica have been learned, let alone internalized. As a result the situation today is far worse in most respects than it was then. There is no decent level of outside support. Prisoners are not organized by institution, let alone on a statewide or national level. And the current degree of political sophistication on the inside is shallow at best and in most joints downright reaction reigns supreme. It doesn't appear as if this will change any time soon.

Who is to blame for today's material conditions? If one put the finger on opportunist leadership they would probably not be far off the mark. But a more important question to ask is where to from here? This writer has not run across anyone with all the answers. Still, a few general lessons can be drawn from past experience.

First of all, the advocates of "off the pigs" and "burn it to the ground" should have their perspectives examined in the light of reality. They burned McAlester down in the early '70s, but has that improved the lot of prisoners there? No! The same for New Mexico. Prisoners in those and other joints are still overcrowded, degraded, powerless, and no nearer to making forward progress. Similarly, prisoners in California have been killing guards (when they aren't busy murdering each other) for years without any substantial change resulting from it. Instead of acts against low level flunkies or quickly replaced prison property, people should prepare for the long range struggle that lies ahead.

One area of important work that can be done now is the formation of study groups aimed at deepening our understanding of progressive political theory. *PLN* will soon be offering books on the philosophy of dialectical and historical materialism. Unlike organizing on the inside, studying politics is an area of activity protected by the first amendment. Building such study groups will be an important step for those who would hope to pick up and carry the banner of Attica.

[**Editor's Note:** The lawsuit for damages stemming from the Attica assault is finally going to trial, 20 years later! See *Al-Jundi v. Mancusi*, 926 F.2d 235 (2nd Cir. 1991)

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The Rich Get Richer...

The North American working class is now ninth in the world in terms of wages and benefits, and continues to decline. At this point the earnings of the U.S. working class have been driven back to what they were in the mid-1960s.

More than 60 million people in the U.S., nearly one-quarter of the population, live in poverty and are struggling day to day. By contrast, a tiny fraction of the population controls enormous wealth. The median net worth of the top 1 percent of households is 22 times greater than the median net worth of the remaining 99 percent of households. The median net financial assets of the top 1 percent of households is 237 times greater than the median net financial assets of the other 99 percent of the population. That 1 percent owns 90 percent of outstanding stock shares.

The wealth of the richest 5 percent of the population increased by 37.3 percent from 1977 to 1988. The wealth of the richest 1 percent increased by 74.2 percent. At the same time, the number of people in poverty increased by one-third.

Prisoners Are Entitled To Recovery For Underpayment Of Wages

By Mark Cook, Leavenworth, Kansas

There are over one million prisoners in the United States, yet we are not counted as part of the US statistical labor force. It is in the interest of those politicians in office who claim their political regime has improved the US economy not to let the public realize that the unemployment rate in the US is one percent higher than presently reported and steadily rising. It would not be good politics to publish that a method of reducing the unemployment rate is to imprison as many laborers as possible.

Prisoners are included as employees under the federal Fair Labors Standards Act (FLSA). In section 13 of the FLSA, 29 U.S.C. 213 (1982), Congress has set forth an extensive list of workers who are exempted expressly from FLSA coverage. The category of "prisoners" is not on that list. *See Carter v. Dutchess Community College*, 735 F.2d 813 (2 Cir. 1984) and *Woodall v. Partilla*, 581 F.Supp. 1066 (N.D. Ill. E.D. 1984).

This means prisoners, contrary to common belief, are entitled to minimum wages as well as fair labor practices and working conditions. Congress passed specific laws affording prisoners the right to minimum wages.

State prisoners working in pilot projects designated by the Administrator of the Law Enforcement Assistance Administration (42 U.S.C. sec. 3701-3796) must receive wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed. 18 U.S.C. 1761(c). The Walsh-Healy Act (WHA), 41 U.S.C. 35, which specifically bars convict labor on government contracts exceeding ten thousand dollars, makes exceptions for state prisoners under 1761(c). Congress passed a similar statute covering federal prisoners providing for wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work is performed. 18 U.S.C. 4082(c)(2) (prisoners in halfway houses and working off prison grounds).

Prison authorities have been violating and breaching contracts made under the WHA for a number of years. Prisoners, who are third parties to the contracts, have not been aware of the violations and breaches as they affect prisoners because prison authorities have taken many precautions not to let prisoners see the contracts. Those breaches and violations of stipulations and representations in the contracts give prisoners the right to recover underpayment of wages for up to two years arrears. The WHA bars convicts from working on government contracts that exceed ten thousand dollars (with the exception of section 1761(c) prisoners) but also provides by statute for recovery of any under payment of wages due to any convict laborer knowingly employed in the performance of such contract. 41 U.S.C. 36.

How much have you state prisoners been paid for making license plates, lockers, desks, etc. for the federal government? How much have you federal prisoners been paid for working in Federal Prison Industries (FPI), commonly referred to as UNICOR? All of the contracts pertaining to the above exceed ten thousand dollars. Do you believe that prison authorities "knowingly employed" you as a convict labor in the performance of such contracts? Then you are entitled to recover underpayment of wages. 41 U.S.C. 36.

Several prisoners working as contract reviewers at the FPI in the U.S. Penitentiary at Lompoc, California, discovered stipulations and representations in every government contract requiring all persons working on those contracts to be paid not less than the minimum wage. One contract represented and stipulated, "2.13 CONVICT LABOR (Clause 10-13) (dated October 1987) in connection with the work under this contract, the contractor agrees not to employ any person undergoing sentence of imprisonment, except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973)."

The authorities invoked in that clause, 18 U.S.C. 4082(c)(2) and Executive Order 17755, allow prisoners in halfway houses or working off prison grounds to work on government contracts. It is quite obvious that prisoners in the U.S. Penitentiary at Lompoc are neither in halfway houses nor working off prison grounds. Thus, the prisoncrats knowingly breached and violated the representations and stipulations of the contracts and the WHA. The prisoners are thereby entitled to recover underpayment of wages pursuant to 41 U.S.C 36. The prisoners working in UNICOR, by the way, are federal, state and territorial, District of Columbia and foreign exchange prisoners.

Complaining prisoners must first advise their prison bosses of the claim for recovery of underpaid wages. That is to be followed by a complaint filed with your regional director of the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, in your state. If you are not satisfied with the local results you file a complaint with the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington, D.C. 20210. And if not satisfied there you can appeal to the U.S. Department of Labor's Office of Administrative Law Judges at the same address.

Convict Labor law does exist and prisoners' political clout, the ability to turn legislative and congressional heads, in part lies in the ability to invoke that law.

The Class Implications Of Prisoner Rights Litigation

Compiled by Ed Mead

Today the most reactionary and violent faction of the ruling class controls the government. These right-wing conservatives ignore the root causes of crime and instead seek to scapegoat prisoners and the poor for all sorts of social ills. And, as can be seen by recent Supreme Court rulings, they express a special disdain for prisoner litigation and those who initiate it.

The radical chic of prison involvement peaked in the 1970s and has been in decline ever since. It will not return until there is once again a thriving progressive social movement on the outside. That may be as much as a decade or more away.

We prisoners are essentially alone, possess little power or influence, and are virtually slaves of the state. Prisoners lack even the pretense of political franchise (the vote) or other basic democratic rights. The means by which we can expand democracy, improve conditions, or reduce physical abuses are few.

Since our isolation is so nearly complete, our weapons few; the choice for many of those with a budding political awareness is essentially one between self-destructive resistance or passive submission to increasingly intolerable conditions. Given these conditions, the manipulation of the law and the exploitation of its contradictions is a legitimate mechanism for fighting back. Indeed, the initiation and prosection of prisoners rights litigation has helped jailhouse lawyers resist the state's efforts to control them. But in adopting this substantially defensive tactic, social prisoners (those confined for non-political crimes) should not burden themselves with the useless baggage of illusions or pretense about what will be required to bring about real change.

Bourgeois law is primarily an instrument of class domination. Any proper instruction of prisoner legal workers must start from this fundamental understanding. While ruling class law can occasionally be an effective weapon in curtailing some of the more serious abuses of state power, it will never be an important instrument of class struggle or the source of our collective liberation. It is a defensive tactic, not a strategy for change. Our near total reliance on litigation is a reflection of our weaknesses, not our strength.

Over the years jailhouse lawyers and their supporters have managed to get outside people involved in the prison struggle; they created grievance mechanisms in the state and federal prison systems; liberalized "privileges" such as mail and visiting; eliminated some of the more heinous practices, like strip cells and digital rectal probes; and somewhat decreased the arbitrary nature of prison rules and staff behavior. But these gains, given by one hand of the state, are today being taken with the other. Legal workers are needed to help defend against the continuing erosion of these gains.

The more politically advanced social prisoners, those who are familiar with the working of bourgeois law, would be well advised to continue struggling on the legal front. They should also be training the next generation of jailhouse lawyers. These are important political priorities.

But in learning the law and training new prisoner legal workers, jailhouse lawyers should take care to avoid bourgeois pretensions, such as behaving like an attorney on the streets by preying on their fellow prisoners for money.

Moreover, progressive jailhouse lawyers should generally focus on rights oriented litigation and the struggle to extend democracy, not on getting individuals out of prison. While helping deserving prisoners with their personal cases is okay, it should not be the central focus of one's legal work. For every person who gets out, five more will come in. It is necessary to understand that the prison is a factory, and the product it produces is potential recidivists who are full of anger and rage over the process of their dehumanization. It is this process, as well as the factory itself, that must be struggled against. One simply cannot make meaningful progress by devoting her or his limited resources to merely getting individual prisoners out of prison. And there are a lot of prisoners so fouled up by the system that they should not be turned lose until we are strong enough to work with them.

If the reader pretty much agrees with what has been said so far, then the next step is a big one. It requires some willingness to break with a lifelong conditioning process. To successfully accomplish the objectives set out herein, one must be armed with the science of dialectical and historical materialism. If progressive social prisoners are to successfully exploit the contradictions of bourgeois law, she or he must, along the way, learn to become a class conscious worker. There just isn't any other method for addressing the real problems confronting confined peoples and their families and loved ones on the outside.

While learning to use the law today, people must also prepare for the struggles of tomorrow. And while training the next generation of jailhouse lawyers, we must at the same time teach ourselves the principles involved in bringing about a radical transformation of existing class relations. Anything less would be to dabble in mere reformism and perpetuate illusions about the actual nature of our condition.

Women Prisoners Entitled To Equal Education

Glover v. Johnson, 934 F.2d 703 (6th Cir. 1991) is a class action suit originally filed in 1978 by female Michigan state prisoners claiming violation of their right to equal protection because they were not provided with educational vocational training programs comparable to those of male prisoners. The case has wound it's way up and down the courts ever since and the lower court had found in 1981 that the womens right to equal protection had in fact been denied and ordered the appropriate relief. The instant case here is an appeal by the Michigan DOC defendants after being found in contempt by the district court for failing to comply with it's previous orders mandating equal education access for female prisoners.

On appeal the Sixth Circuit Court of Appeals affirmed in part and reversed in part. The Court of Appeals held that the district court had abused it's discretion in finding the DOC in contempt for not implementing work pass and vocational programming as these were not included in the lower court's final order in 1981.

The Court of Appeals upheld the civil contempt finding for the defendants disobeying previous orders and requiring defendants a special administrator in the case.

Group Cites Shift From Education To Prisons

The criminal justice system is "stealing" dollars away from public education, according to a study by the national Center on Institutions and Alternatives (NCIA), an Alexandria, Virginia-based criminal justice research organization. "We're trading textbooks for prison cells," a NCIA representative said in releasing the report. "But the more money we throw at the criminal justice system, the more it fails."

American cities now spend 20 percent more on law enforcement than on education, NCIA found. In 1968-69, city spending per capita for criminal justice was $27, compared to $34 for education. By 1988-89, the priorities had reversed; cities spend $130 per capita on criminal justice, and $106 for education.

A similar situation was found at the county level, where criminal justice overtook education in appropriations in 1982. By 1988, the gap had grown to $2 billion; criminal justice funding exceeded education funding by approximately 12 percent.

At the federal level, the government cut its aid to education by more than 25 percent between 1979 and 1989, while increasing its criminal justice spending by 29 percent in constant (inflation-adjusted) dollars, NCIA said.

The study was based on figures from the U.S Bureau of the Census, the National Association of State Budget Officers, the federal Bureau of Justice Statistics, and other sources. The author of the report, George Washington University Professor William J. Chambliss, argued that "the criminal justice system as a means of coping with the problem of crime is an utter failure," and that "education, more than any other factor, reduces crime."

But politicians find it easier to cut education funding than criminal justice funding, he said, citing examples where local officials tried to reduce police budgets but backed down after police unions raised fears about public safety.

The report, *Trading Textbooks for Prison Cells*, is available from the NCAI, 635 Slaters Lane, Suite G-100, Alexandria, VA 22314.

Supreme Court Slams Conditions Case

Just before finishing its last session, the United States Supreme Court handed down a ruling making it more difficult for prisoners to challenge the constitutionality of prison conditions. The five to four decision held that prisoners must prove that prison officials not merely maintained inadequate facilities, but deliberately did so.

The court's reasoning was that under the eighth amendment's prohibition of cruel and unusual punishment it isn't enough to prove that prison conditions are below minimum standards. A prisoner must also show that these inadequate conditions were the result of "deliberate indifference."

The case involved a lawsuit filed by an Ohio inmate who alleged a broad range of inadequate prison conditions, including overcrowding; poor heating, cooling and ventilation; unsanitary restrooms and dining facilities; and housing with mentally ill and physically sick inmates. The practical effect of the ruling, written by Justice Antonin Scalia, is that prison officials can avoid liability for all these practices by saying they lack the funds to improve the conditions and can't obtain more state money.

The dissenting opinion, written by Justice Byron White, and joined by Justices Thurgood Marshall, Harry Balckmun and John Stevens, was less optimistic. The dissent said it will be difficult to prove that officials acted deliberately because "inhumane prison conditions often are the result of cumulative actions by numerous officials inside and outside a prison, sometimes over a long period of time." See *Wilson v. Seiter*, 111 S.Ct. 2321 (1991).

Prison/Community Alliance Update

By Carrie Roth

I received a copy of the June 24, 1991 Indeterminate Sentence Review Board (ISRB) minutes today and in it is another example of the ISRBs' inability to adequately perform their duties. In the minutes is a short paragraph which states, "Ms. Bail sent a memorandum to Chase Riveland regarding the admission of indeterminate offenders to the Sex Offender Treatment Program (SOTP) and the criteria for admission.' She received a follow-up letter from the Director of that program which would lead one to believe the indeterminate offenders are eligible and the Board can refer inmates or encourage them to volunteer. This information is contrary to what we have been told before. Therefore, Ms. Bail has asked for clarification from Dr. Schwartz and Mr.Cedeno."

I need to give you some background. I became aware in late 1988 that pre-July 1, 1987 offenders were being denied admission to SOTP solely because of the date of their offense. The law was written mandating treatment to those offenders who committed after DSHS turned over treatment to the DOC. The first Sentencing Guidelines Commission meeting I attended was in late 1988 or early 1989. I stated to the Commission members that pre-July 1, 1987 offenders were being denied treatment because of the date of their offense. Ms. Bail leaned forward and very emphatically exclaimed "That's not true." I looked at her and said, "Then why do I have a letter from Tana Wood stating it is true?" I dropped the subject partially because I was intimidated enough by the Commission members without being called a liar by the Chair of the Parole Board. After the meeting Joe Lehman, then director of the Departmen of Corrections, asked me if I had a copy of the letter, which I mailed to him. In subsequent meetings I singled out commission members bringing this subject to their attention. Finally, late in 1989, I was told I could address the Commission on the subject. At the next meeting, with help from Commission Member Jon Ostlund, I was able to make my point that sex offenders should not be denied entrance into the SOTP solely because of the date of their offense. During the 1990 legislature the law was changed to allow pre-July 1, 1987 offenders into the SOTP as space and funding was available.

I do not understand how Ms. Bail, working in the capacity of her job, would be relying on being told the criteria of referring or not referring indeterminate inmates to the SOTP. Back in 1988 and 1989 the ISRB was telling some offenders they could parole if they completed the SOTP. Apparently the ISRB was unaware that these offenders weren't eligible for the program. Now, 1½ years

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Prison/Community Alliance *continued from page 5*

after the law was changed to allow indeterminates entrance, she is questioning a letter from the SOTP director because it is contrary to what she had been told. Doesn't she read the laws her ISRB is supposed to follow?

On another subject, Chase Riveland stated that two minimum custody farms will become drug and alcohol treatment centers in 1992. This will be the first alcohol or drug treatment offered to those in prison by the DOC. Up until now the only program offered was the STOP program which is not drug/alcohol treatment but drug/alcohol education. In actuality the STOP program has been a program which met the states minimum requirements for those with drug/alcohol problems.

By the time you read this, the initiative to bring all offenders under the determinate sentencing (SRAs) should be through both the Attorney General's office and the Code Revisors office. The A.G. will re-word it into question form and give it a title. We have to approve or disapprove the re-write and the title. From there it goes to the Code Revisors office to check for statutory or constitutional problems. If we progress as planned, the *PLN* will print how the actual initiative will read in the next issue.

Lastly, the United Way campaign will be starting soon. If your company offers payroll deductions I am asking you to specify your donation to the Simon of Cyrene Society, Inc. (Matthew House in Monroe). It is an ecumenical, interracial, non-profit organization committed to helping the families and loved ones of those incarcerated in the prisons and jails across the state of Washington and operates two programs.

Matthew 25:36 House of Hospitality. Located just outside the gates of the Washington State Reformatory in Monroe, it offers support, caring, counseling, emergency food supplies, clothing for women and children, drop-in day care during afternoon prison visits and overnight housing for families traveling over 200 miles.

The Family Bus Service. It carries families and loved ones from the Seattle area to Walla Walla, Shelton, McNeil Island, Clallam Bay and Monroe for inmate visits.

It is an excellent organization which is always in need of support and all donations are tax deductible.

Prison Discrimination Illegal

Mark Labounty, a black New York state prisoner filed suit under 42 U.S.C. § 1983 claiming violation of his Eight amendment right to be free from cruel and unusual punishment and his right to equal protection of the law because he was denied work as a prison electrician while white prisoners were not. Labounty also claimed that no black prisoner had been allowed to work as an electrician in over ten years at Greenhaven prison. The district court dismissed the suit upon defendants motion as being "frivolous."

The Court of Appeals reversed in part and remanded the case finding that if he can prove his discrimination claim Labounty is entitled to relief. The Court of Appeals upheld dismissal of the 8th Amendment claim finding no "punishment" was involved. See *Labounty v. Adler*, 933 F.2d 121 (2nd Cir. 1991).

Editorial Comments

By Ed Mead

Welcome to yet another edition of the PLN. In this issue I have an article on the class implications of prisoner rights litigation. It was written in response to one of many letters we get from readers asking about the politics of doing legal work from the inside. Some feel legal work is a useless and dead end form of activity. (See the letter from L.F. at Dwight Women's Prison in this issue's Letters Page.) When Paul and I write about issues of class it is usually not merely to talk politics from a soapbox, but rather to answer the real questions that emerge around people's day-to-day practice on the inside. If you have comments, either on Lisa's letter or my article on class and law, pass them on to us. These are the kinds of discussions that make for a lively newsletter.

What does not make for good reading, though, is our constant calls for you to dig into your pockets for more money to support the work we are doing. We pay as much as 69 cents an issue to get each copy of the *PLN* into your hands (40 cents for copying costs and 29 cents postage). We are prisoners who earn a maximum of only 28 cents an hour. It is only through your ongoing donations that we are able to produce this paper each month.

Paul and I gather the material together and type it up in our cells. We then send the work out to another person on the streets (Judy), who does the desktop publishing on a computer. Yet another volunteer (Scott) takes the master pages of the *PLN* to the photocopying place and runs off the necessary number of copies. Our mailing list volunteer (Dan) provides the updated mailing labels each month. Then still another set of volunteers (Janie, John, Steve, and Michael) do the folding, stapling, adding labels and stamps and do the actual mailing to you. Finally, when you write to us at our Florida address, our volunteer office manager (Rollin) sends you sample copies, accepts donations, and notifies people about changes in the mailing list.

All of the above people donate their time and energy to make this thing happen each and every month, on time. What we don't want you to say is, "Well, eight months ago I contributed my five bucks so that ends my responsibility." Just as our obligation is a continuous one, so too is yours. These are hard times. It is important for those of us on the inside to keep the spark of progress alive. This paper is one vehicle that can help to achieve that end. But we cannot do it well unless you too make ongoing contributions.

Prisoners are not the only ones who can help. We also need more outside volunteers. Scott is leaving to taking a teaching position in China this month. Other people go on vacations or have other responsibilities to meet. We need replacements. The production team meets to do the mailing at the American Friends Service Committee building, in Seattle's University District, on the last Tuesday of each month at 3:00 pm. Just drop in or else leave a message on Janie's answering machine (phone number 221-7114) so she can call you back with additional information you might need. It will take only a couple of hours of your time, once a month. Please try to be there.

Last month we published an article on Japan's prison system. The article may have given readers the impression that if we only adopted the Japanese approach to corrections all would be well. That is clearly not the case. While a more

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gentle approach to crime and punishment would be a positive, if unrealistic, step forward, the underlying causes of crime (poverty, unemployment, etc.) would continue to create new generations of criminals. Ultimately, only fundamental social change can create lasting solutions.

Our idea of getting prison law libraries to subscribe at our "low" institutional rate of only sixty bucks a year ($5 an issue) fell flat on its face. We will continue to have no individual subscription rate, but will charge state institutions a more realistic figure of twenty-five dollars a year.

CBCC Mail Suit Filed

By Paul Wright

In May of 1991 CBCC mailroom staff here began a practice of rejecting without notice to the prisoner or the sender or an opportunity to appeal all mail that arrived without the prisoners DOC number on it. No notice of any type was given of this practice and it was applied to all CBCC prisoners. Among my mail rejected was my draft copy of *PLN* for the June 1991 issue which led to a delay in it's editing and other letters and magazine subscriptions.

In June of 1991 I filed suit in U.S. District Court in Seattle claiming violation of my First Amendment rights to free speech and communication in the mail being rejected and violation of my right to due process of law where the mail was rejected with no notice to me or any opportunity to appeal the rejection which is specifically mandated by WAC, DOC and CBCC policies as well as the U.S. Supreme Court decision in *Procunier v. Martinez.*

Sued as defendants in the action are mailroom sergeant Abe Clark, mailroom employee Joan Smith, Grievance Coordinator Mark Crewson, Superintendent Neil Brown and Associate Superintendent Bob Shaw. Right now the case is still in the service of process on the defendants stage. I also filed for a Temporary Restraining Order to halt the practice but this had not been ruled on yet. The practice seems to have been voluntarily discontinued for now by the defendants.

Anyone who wrote to me during this time period and had their letters returned please inform me of this and contact me via *PLN*, if possible please send the envelopes or mailing container that was returned to you claiming it was undeliverable.

Families Against Mandatory Minimums

FAMM is a nationwide organization of citizens working for the repeal of statutory mandatory minimum sentences. Its members consist of prisoners, their families and loved ones, lawyers and civil rights activists. Mandatory minimum sentences are sentences which must be served with no possibility of parole or early release and which give the prosecutor enormous power in deciding what charges to press. First time offenders are heavily impacted by these sentences.

FAMM is gathering information about outrageous sentences imposed because of mandatory minimums. They have an information packet and membership form (membership is free) available upon request. In view of the Supreme Court recently upholding a Michigan law that requires life without parole for anyone caught with over 650 grams of cocaine or heroin, and a number of laws with mandatory minimums recently passed by Congress, there is a need to stop and limit these practices.

For more information write: FAMM, 2000 "L" St. N.W., Suite 702, Washington D.C. 20036 or call (202) 833-FAMM.

– Letters From Readers –

Why Do Legal Work?

Dwight Correctional Center is served educationally by Lewis University, "A Christian Brothers University." Lewis University offers courses entitled Paralegal I and II (16 weeks each), which I have decided to take. According to Lewis University, "the primary purpose of this course is to train inmate law library clerks to possess a level of skill and general knowledge in legal research and writing. The student will develop a knowledge of the specific areas of substantive and procedural law in which they are most likely to assist other inmates who use the institutional law library."

I doubt, for various reasons, that I will become a law library clerk, but aside from that, I still had mixed emotions about originally signing up for the course. I believe that one must like to practice a skill before one can do it well, and I am not fond of the law. In fact, I despise the current law-making process, and have nothing but contempt for the current legal system. Would I, then, make an effective paralegal?

You may ask, "Why, then, bother to take the course?" I'm taking it because to better understand how this system works, and to impart that understanding to those who are even more in the dark that I am. But, as I look at recent Supreme Court rulings, I am less and less convinced that this system can be beaten using its own laws. I'm trying not to be pessimistic or fatalistic, and am really hoping that someone can show me a different perspective from which to undertake paralegal studies.

L.F.

[Editorial Note: The article "The Class Implications of Prisoner Rights Litigation" in this issue was written in response to your letter.]

State And Federal SRA Paroles Systems Similar

I find the articles in *PLN* dealing with Washington state's dual sentencing procedure interesting and thought provoking because the federal system is going through something worse. There are at least four sentencing procedures going on here. The oldest is for those prisoners sentenced under the Board of Paroles Act, which was repealed in 1976. Parole under that Act is supposed to be based, in part, on rehabilitation. The Parole Commission Act, which replaced the Board of Paroles, follows a discretionary system of guidelines. The latest system is the federal SRA, where prisoners (defendants) are sentenced by the court as Washington state SRA defendants are sentenced. But in the federal system, old law prisoners get none of the benefits of the new law nor are we given any non-discretionary dates.

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The fourth class of convict is the Immigration and Naturalization Services (INS) prisoners. They haven't committed any crimes in the U.S. Their "paroles" are more iffy than that of U.S. prisoners.

The U.S. Parole Commission was supposed to be abolished in 1987, but they got a five year extension until November of 1992. Another five year extension was granted recently so they'll be in business until 1997.

Complaints of the old-law prisoners in the federal system parallel those of the old-law prisoners in Washington state.

M.C., Leavenworth, KS

Racial Discrimination At Raiford

The prison population at gulag Union Correctional Institution (UCI) in Raiford, Florida, borders on 1,500 captives. The population is made up of approximately 800 Blacks (55%), 675 Whites (43%), and 120 Hispanics (7%).

Under the compulsory slave labor theme of the thirteenth amendment, prisoners in Florida are compelled to work for the state. At UCI job classification is a systematically racial placement. Black and other non-white prisoners are selected and placed in undesirable jobs (poorly managed, supervised and operated), like food service, the laundry, inside grounds, and horticulture. While white prisoners predominate in desirable jobs, such as dental laboratory, maintenance, machine shop, general supplies, radio/television repair, electronics, carpentry, air conditioning, and vocational classes. Here is a racial breakdown of UCI job assignments:

Food Service: Blacks 100, Whites 7, Hispanics 15
Laundry: Blacks 75, Whites 20, Hispanics 5
Inside Grounds: Blacks 50, Whites 15, Hispanics 7
Horticulture: Blacks 47, Whites 13, Hispanics 4

Janitorial services, housing areas, administration building, school, and the recreation yard make up the remaining jobs, which are predominantly made up of Black and Hispanic prisoners.

We feel that this is a colorable claim under 42 U.S.C. section 1983 civil rights complaint. Contact Lawrence Jones or myself for more information or to help us with legal advice.

Lawrence Jones #077137
Darryl Conquest #109347
P.O. Box 221, Raiford, FL 32083

Resistance At Pelican Bay Gulag

Greetings from the Control Unit in California's Pelican Bay state prison. I am litigating a civil rights act lawsuit, 42 U.S.C. sec. 1983, due to being forcibly double celled here. The case is *Fetters v. Marshall*, N.D. Cal. Case No. C-91-0633. Correctional personnel here at Pelican Bay tend to harass and play psychological mind games with prisoners. I filed an administrative grievance on mental domination/resistance breaking tactics being used on prisoners here. I drew a parallel with Stammheim Prison in Germany and the tactics used to violate the United Nations's Declaration of Human Rights guarantees of the RAF. It was denied, of course. I made a draft of Biderman's chart of coercion and put it in as an exhibit in the appeal. I focused on isolation, threats and degradation issues experienced in this gulag. Due to people who have gone before me and given all to the struggle, I am proud to continue my battle against oppression here in California's Department of Corrections. The resistance will not stop.

T.R.F., Crescent City, CA

More Racism In Florida's Slammers

I have recently heard of the *PLN* and at this time I will share some headlines of the legalized slavery here at Martin Correctional Institution. There are serious racial problems at MCI within the administration and continuous harassment and brutality by correctional officers. The most flagrant problems at MCI can be defined within two categories. The negative attitude exhibited by guards towards the inmates in their charge, and the failure to provide adequate resources. Racism permeates the atmosphere at MCI. It surfaces daily in racist acts against inmates; derisive racial remarks, threats, and other forms of harassment by correctional officials abound.

Although racism and its manifestations defy easy categorization, they cannot be ignored. Close management, for example, is dominated with Black inmates who have been deprived of the right of going before the review board as required by the rules; cannot earn gain time; no rehabilitative programs; no physical access to the law library; no proper outdoor exercise; cannot play chess; checkers, cards; or smoke on the recreation yard, etc. Caucasian inmates are having a hard time to be placed in close management status and easier for them to be put on CM2 or population than Black inmates.

This leads to an increase in tension and unrest, thereby exacerbating other problems. Curtailing the racist attitudes and behavior of MCI's administrative and security staff is unquestionably a difficult task. Especially in an insular setting where the inmate population is predominantly Black, while the administration and security staff are overwhelmingly White. Nonetheless, this problem must be confronted if others are to be alleviated.

Closely connected to the prevalence of racist conduct by officers and just as difficult to categorize is the indifferent attitude exhibited by the MCI administration toward legitimate inmate grievances. The answers of the administration do not address the actual issues, and when they do investigate they don't even bother to talk to the witnesses that you name.

This indifferent attitude and lack of responsiveness to legitimate complaints of brutality only increases the frustration and anxiety of inmates who have no other recourse for dealing with their problems.

Florida's Department of Corrections just recently issued a new rule to the effect that indigent inmates will be allowed only one free letter a month. Those who have relatives across the water cannot write to them because it takes two stamps.

If anyone is interested in seeing paperwork on these allegation they can get in touch with me.

Vincent D. Harris #092011
1150 S.W. Allapattah Road
Indian Town, FL 33456

Likes Our Paper

What an excellent newsletter that *PLN*. It's an instrument for developing solidarity and resistance to arbitrary prison operation and vindictive governmental policy. It combats stereotypes about who prisoners are, the kinds of men and

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women. Perhaps it encourages the reader to look more deeply into the relationship of criminality and punishment by means of incarceration. You might certainly say that criminality and corruption are flourishing in the U.S. And to a widely varying extent, popular consciousness, misled by the media and governmental hype, attribute a cause and effect relation to lawlessness and jails. The simple-minded see imprisonment as the most logical answer to the crime problem that seems to threaten society, stupidly failing to appreciate the need for laws that will deter swindling by bankers, buying of elections, thuggery by policemen, and the whole range of brutal victimization carried on from the seats of power. *PLN* plays a part in exposing the scapegoat strategy that takes the place of any serious societal effort to get at the roots of the most significant, endemic corruption and criminality. And *PLN* serves a third function: your newsletter is a means of bringing analysis to issues such as the SRA and other legislation from the viewpoint of the prisoner. There are some lawyers, officials, and legislators who remain human and willing to study and understand. It's terribly important that this minority segment get the benefit of the kind of analysis you are doing in *PLN*.

Hal

Prison Education

As you know, the 9th Circuit ruled in *Hernandez vs. Johnston* (a case out of MICC) that we don't have a right to education or rehabilitation. My opinion is the that whole "school in prison" thing is a sham. The state could care less about education for prisoners. It's used as make-work to occupy people. Like here [Clallam Bay] Peninsula College is not even accredited! That means they can't offer degrees and credits won't transfer to a place that will.

Then there's the level of learning; my high school classes were more challenging than this stuff I'm taking now. The state likes to pour money into stuff like video and computer stuff while the vast majority of prisoners lack basic literacy skills. I tutor the non-English speaking prisoners here and until recently there was no specialized ESL texts.

Nearly all of the materials being used in the literacy program is stuff that I've drawn up on my own. I've had to teach guys to read and write (the alphabet, their name, etc. from square one) with note cards I've made myself because there are no materials to do it with because DOC won't buy them. I've been teaching ESL and basic literacy to prisoners at [two prisons], and do you know how much support I've seen from the prisoncrats? Not much. At WSR they stuck us in the janitor's closet in the Prison Activity Building, and the prison staff complained about us even using that small space!

Maybe I'm just a little cynical. Perhaps the state has no interest in education as it would lower the recidivism rate and lessen the demands for their prisons. Then, also, a bunch of illiterates are a lot easier to victimize and control than people who can read and write.

PW, CBCC

View From Italy

The U.S. prison system is one of the worst in the world: it is a means of mass oppression and control against the "minorities" (the people of the inside colony) and the proletarians – a perfect example of "class justice" as Marx said – and a specific means of destruction of the revolutionary people, those who oppose the system. So we can see the biggest prison system inside the richest economy of the world and the most sophisticated strategy of solitary confinement and sensory deprivation, such as Marion. And now imperialism benefits from the experiences of different countries in order to build a general counter insurgency strategy, of repression and maltreatment of it's social and political prisoners. Imperialism, and U.S. imperialism above all, all the times speaks out about "human rights standards," yesterday denouncing the Soviet Union, today Cuba, but imperialism crushes peoples human rights every day and everywhere. Human rights standards is a class definition. Now the U.N. is a "democratic" covering in the hands of the U.S. and the other industrialized western countries, as the "watchdog" of capitalism against the people and proletarians of the world (look at the Palestinian people and Kurdish people, Iraq, El Salvador and all of Latin America) using the human rights blanket.

But human rights can also be a proletarian and revolutionary tool against imperialism inside the process and the struggle for liberation and emancipation all over the world. Imperialism and human rights exclude each other because of the destructiveness of the imperialist system. In that sense prisoners, at the bottom of the oppressive system, have a lot to do with "human rights" from a proletarian revolutionary perspective."

Giovanni Senzanni
Marion del Tronto, Italy

Plight Of The Young

Well readers, the state of Washington and the U.S. Supreme Court have finally come to the bottom of their barrel of tricks, and they still drive ahead.

The June 1991 issue of the *PLN* carried an article about the U.S. Supreme Court's refusal to overturn young [13-years] Barry Massey's sentence of life without the possibility of parole for the killing of a Tacoma man.

While I do not wish to make light of his crime, nor do I wish to discount the pain the victim's family must have gone through. But having been convicted of murder at an even younger age, I am simply appalled that in a country with a so-called system of legal justice that a boy of 13 could be faced with doing the rest of his life in prison. It would be an understatement to imply that he'll now be faced with becoming a product of his environment.

This convict hopes the grape vine will help this youngster to become a man and not, well ... one of those others. [**Ed. Note:** The *PLN* does not subscribe to the homophobic implication that there is something wrong with consensual homosexuality.] I personally feel that he deserves at least a fair chance after being so tragically abused by a system that we as prisoners all love so much!!!

T.C., Walla, Walla, WA

24-Hour Cell Lights

Prisoners confined in the oppressive and mentally debilitating environment of the Intensive Management Unit (IMU) at Walla Walla are being subjected to a highly effective form of sensory deprivation, a part of which being the lights in cells that are kept on 24 hours a day.

These lights, which just happen to be directly over the head of the bed, are kept on 24 hours a day. This is supposedly to enable the prison's watchdogs visual contact

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while making general rounds, and during count times. But this is just an excuse that masks a program of mental oppression. If the prison administration were not so preoccupied with surpassing the Hitler regime's technologies of mental torture they could simply order IMU guards to use flashlights for these count times, etc.

In reality, these lights are kept on in order to interrupt prisoners' natural sleeping patterns, thus said prisoners are kept continually tired, causing them to become less resistive and more passive prisoners.

The sickest result of this mental torture is that many of the 95 or so prisoners being held in the W.S.P. IMU are being left no valid alternative than to turn to the institution's mental health unit for those oh so well known and easily acquired mentally destructive drugs, of which are handed out like candy, just to get a little sleep.

Anybody wishing to correspond on this matter should direct response to: Tom Langbehn, P.O. Box 520 (IMU/B-11), Walla Walla, WA 99362.

The Prison/Community Alliance (P/CA) is a group of Washington state prisoners and concerned citizens whose goal is to abolish the Washington state Indeterminate Sentence Review Board, AKA the parole board, and bring all indeterminate sentence prisoners under the new SRA guidelines. The courts and the legislature are unwilling to abolish the parole board, so the way the P/CA is focusing on doing this is the ballot initiative, to let the voters of the State of Washington decide whether or not they want the parole board.

P/CA does not need money, they need people willing to get involved and make their voices heard. PLN will cover new developments as they occur. To get involved or for more information please contact: P/CA, P.O. Box 276, Kent, WA 98035.

Prisoners' Legal News
P.O. Box 1684
Lake Worth, FL 33460

Prisoners' Legal News

Working to Extend Democracy to All

Vol. 2, No. 10 October 1991

Getting Rid Of The Board: Status Of The Initiative Process

By Ed Mead

Back in the February issue we told readers that the Prison/Community Alliance (P/CA) and the *PLN* editors were in the process of drafting sample legislation that would abolish the Board and turn its functions over to the courts. We mentioned our hope to launch a citizens' initiative campaign to get the proposed law on the statewide ballot in 1992. We have since written that proposed law, and we have also made progress toward getting it on the ballot. The draft law, is the form issued by the Code Revisors' Office, say:

"An ACT relating to the indeterminate sentence review board; and adding a new section to Chapter 9.95 RCW.

"BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

"**NEW SECTION** Sec. 1. A new section is added to Chapter 9.95 RCW to read as follows:

"(1) The indeterminate sentence review board shall set minimum term release dates for all inmates serving indeterminate sentences, except those who have legislatively mandated minimum terms. Minimum terms set by the indeterminate sentence review board and those imposed by statute shall stand as determinate sentences. Once the term is set, the indeterminate sentence review board shall have no further authority over the inmates and the inmates shall be treated in the same manner and under the same criteria as inmates serving determinate sentences under Chapter 9.9A RCW.

"(2) The governor shall appoint a review board to review all cases of exceptional sentences above or below the applicable Chapter 9.94A RCW range. The review board shall consist of three superior court judges who shall each be responsible for a geographical area. Each judge shall be empowered to hold sentence reviews for those inmates within his or her geographical area. The review board shall review cases on an individual basis and shall review all exceptional sentences. All rights and protections afforded offenders under Chapter 9.94A RCW at sentencing apply to hearings under this subsection."

Once the Code Revisors' Office and Washingtons' Secretary of State had finished with our draft bill, it next went to the Attorney General, who then gave our little initiative a twenty-word ballot caption and a 75-word summary statement of our proposed bill. This is the ballot title and summary as they would appear on the ballot (in the event we obtained the necessary number of signatures).

Ballot Title

"Shall inmates with indeterminative sentences change to determinative sentences, and sentences which are outside the standing sentencing range be reviewed?"

Summary

"Inmates convicted of crimes occurring prior to July 1, 1984 serve indeterminate sentences not exceeding a maximum term. Releases before completion of the maximum term are subjected to parole.

"This initiative requires the Indeterminate Sentence Review Board to set, for those inmates, minimum terms which would be treated as determinative sentences. Release after the term would be without parole.

"The Governor is to appoint three superior court judges to review all sentences outside the standard sentencing range."

The earliest we can file our initiative to the people is January 3, 1992. We would then have to get the necessary number of petitions completed (signed) and back to the Secretary of State's office by August 1, 1992, in order to be on the November 1992 ballot. Between now and December 31st will be the time to object to any of the language in our initiative to abolish the board. After that date we will be calling on people to get blank petitions from us and to help obtain the signatures of registered voters.

As most regular readers know, the courts impose exceptional sentences, terms outside the applicable guideline range, in only 3.7 percent of the cases, and over half of those exceptional terms (56%) were below the standard SRA range. Whereas 53 percent of pre-SRA offenders having their terms adjusted by the ISRB received terms outside the guideline range, and all of those exceptional terms were set **above** the applicable range. According to a report issued by the Legislative Budget Committee late last year, there would be a considerable savings to taxpayers if the board were to be completely abolished. "If the ISRB ... were to be eliminated entirely," the report said, "the state would save approximately $3 million in the first year." The report then goes on to say that the above figure "does not include the savings that would accrue from releasing from prison those people who have served terms beyond the [SRA] presumptive range. If this number is 500 prisoners, the savings could be as high as $11 per year."

1992 may prove to be a busy year for old guidelines prisoners and their loved ones on the outside. Just how "busy" will be the yardstick by which our level of success (or lack of it) will be measured. It is nearing that point where we stop whining about the board, and instead start doing something about sending it into the dustbin of history.

Remembering Attica Correction

Beryl P. Sanders,
Community-Help Foundation Unlimited

I think I should first make a few points clear before I start. This article is to make a couple of corrections because this much needed newsletter gets into the hands of many readers. For fear that some will read the mentioned article and jump/react negatively, I personally felt the need to write the following.

I'm a full supporter of the *"Prisoners' Legal News"* and have been for several months now. I've promoted the paper and through my efforts have motivated a number of others to subscribe; so, I'm not writing this article in any way to cause a damper on continued support of a very much needed newsletter, especially one that goes to prisoners/families of prisoners, etc, in many states. The September 1991 publication, "Remembering Attica: Twenty Years Later," by Ed Mead especially caught my attention because my group and I are "Prisoner Rights Advocates" here in the state of Washington. We have, and are still helping prisoners throughout the state to deal with many prison concerns. A lot of the issues are valid (documentation available). The jail/prison abuses happen much too often. Many affiliate groups will agree on this. We've had protest "rallies," bringing more public awareness to the problems such as mistreatment, abuses, poor medical attention, lengthy, and dual sentencing. Intensive Management Units (lengthy punishment), and the Administrative Segregation (Ad-Seg) another form of isolated punishment immediately used when a "so-called" "reliable informant" is allowed to drop a "kite" (supposed information on another inmate) and the accused inmate is usually hurdled into Ad-Seg. for any amount of time, while the appointed administrators say they are conducting an investigation? (DOC investigating DOC – real serious investigating.) If the accused is found "not guilty," which isn't too often, custody status has been stripped and remains as such, and/or threat of "transfer" to another prison is awaiting him, and the madness goes on.

Prisoners' Legal News is a well distributed and an interesting one and because it goes into so many homes, prisons, etc., I would like to make mention of some recorded "documentation" of the "Attica tragedy." According to (1) *The Bill of Rights* by Herman Badillo, and (2) *The McKay Commission Report*, the outside observer team did not include the Rev. Jesse Jackson, nor did it produce indication that the Rev. was even asked. From reading past and present media, etc., Rev. Jackson has been described as nothing less than a very "unique humanitarian." I would surely believe that if he were in a position of instant decision making that took place in the "D" yard, when the order was made to "clear" the yard, the Rev. would have done so only with the understanding and promise that inmates would be returned to their cells unharmed. He (Jesse Jackson) is non-violent, but firm is his negotiations, and all that I've talked to respect him as the same. The "media" representation had no idea that the prisoners would be slaughtered in the yard. The blame, without any doubt, should be on those in charge – the Warden, the Commission of Corrections, and as the article stated, Governor Rockefeller. Those orders had to come from the authorization from those in charge of maneuvers. As for the "outside observer team," they should be commended for their efforts of responding to come and try to help out. Most people, or shall we say the majority of the outsiders rarely move from in front of the TV set to help anyone, not alone prisoners who the media blows us to be always the guilty. Many others won't respond because of the bureaucratic hog-wash that one has to put up with in order to help.

We (the Washington Prisoner Advocate groups) constantly make the plea to administrators, officials, and of course the Indeterminate Sentence Review Board to release those "old guideline" prisoners and give them a chance to parole, go to work release, etc. The lengthy incarceration is another reason for the over-crowded prisons – prisoners sitting there that should be given a chance to parole and re-direct their lives.

Let's continue to support and show examples of Unity – never forgetting the bravery of those fallen men at Attica and their families. "Attica – A True Tragedy."

Subscribe to the Prisoners' Legal News!

If you have not made a donation of stamps or money to PLN, please do so now. Send such contributions to Prisoners' Legal News, P.O. Box 1684, Lake Worth, Florida 33460. Mail your submissions of articles, artwork, etc. to either:

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(If you are located in Europe or the Middle East send financial contributions to Oxford ABC, Box ZZ, 34 Cowley Rd., Oxford, England. Readers in Latin America, Australia and New Zealand should send their PLN donations to Toronto ABC, P.O. Box 6326, Sta. A, Toronto, Ont., Canada M5W 1P7.)

AIDS In Prison: The New Death Row

By Heather Rhoads

[Note: The following article originally appeared in the September 1991 issue of *The Progressive* magazine. It was edited for length by Ed Mead.]

Prison AIDS wards are being called the new death row. A 1987 study by the Correctional Association of New York found prisoners with AIDS to be dying at twice the rate of non-prisoners with AIDS. "Many prisoners with AIDS spend their last days in prison isolated and alone, far from their families and loved ones," says Cathy Potler, director of the Association's AIDS Prison Project.

The National Institute of Justice reports a 606 percent increase in confirmed AIDS cases in U.S. prisons and a sample of large jails from 1985 to 1989. AIDS is currently the leading cause of death in New York state prisons, where an estimated 9,000 of the state's 54,000 inmates are HIV-positive. Health officials expect a surge in AIDS deaths among prisoners across the country.

Continued on page 2

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AIDS in Prison *continued from page 2*

The penal systems in New York, New Jersey, California and Florida have been hit the hardest by the AIDS crisis so far – states where poverty and IV-drug use have also reached epidemic proportions. The New Jersey Department of Corrections estimates that 30 to 50 percent of its inmates are HIV-infected; in Broward Country, Florida, more than 50 percent of inmates who volunteered to take the test were diagnosed as seropositive.

The National Institute of Justice reports that infection rates among female inmates are skyrocketing as well. A recent epidemiological study found higher seropositive rates for women than for men in nine out of ten correctional systems. In New York City, 26.5 percent of female inmates tested seropositive in a blind survey, compared to 16.1 percent of male inmates. About 35 percent of the more than 400 women who chose to take the test at MCI Framingham in Massachusetts were found to be HIV-positive, compared to 13 percent of male prisoners.

According to Social Justice for Women, a nonprofit prisoners' advocacy group in Boston, the higher seropositive rates among women reflect the tendency of judges to sentence women for crimes related to poverty and substance abuse. More than 90 percent of incarcerated women have histories of chronic drug use and many have worked as prostitutes; most are serving short sentences for nonviolent crimes related to their addictions. By contrast, relatively few male prisoners are IV-drug users, and they are more often convicted of violent crimes.

By choosing mass imprisonment as the response to drug use, federal and state governments have created a de facto policy of incarcerating more and more HIV-positive infected individuals. "Under the present policy, the percentage of drug offenders in the federal prison system will rise by 1995 from 47 percent to 70 percent," the National Commission on AIDS warns in its 1991 report.

"With the amount of needle-sharing that goes on, we are sitting on top of a powder keg," says Doug Nelson, director of the Milwaukee AIDS Project. "We may well have an explosion of HIV infection. That will obviously have an effect on correctional systems."

Prison and jail overcrowding further exacerbates the crises. In the past decade, the United States had dramatically increased its prisoner population. The federal prison system alone holds double the number of inmates it had in 1980. Chronic overcrowding increases inmates' exposure to infectious diseases – a particularly grim situation for immuno-deficient prisoners. Proper nutrition is often unavailable and experimental treatments and alternative therapies are virtually unobtainable in the nation's penal facilities.

Last spring, the Legal Aid Society Prisoners' Rights Project filed a federal class-action lawsuit against New York State corrections officials, charging them with failing to deliver even nominal health care to inmates with AIDS and violating the Eighth Amendment ban on cruel and unusual punishment. Among the ten plaintiffs is an inmate with an advanced brain infection who cannot walk or feed himself and has no control of his bowels or bladder. For weeks he was left to dehydrate and lie in his own urine and feces; nurses dismissed his incontinence as "manipulative" and "childish."

"The situation today for many prisoners living with HIV disease is nothing if not 'cruel and unusual,'" the National Commission on AIDS declares. "Too many correctional facilities subject inmates to a series of unnecessary, arbitrary indignities which fundamentally affect their basic human rights."

According to Judy Greenspan of the ACLU's National Prison Project, one third of AIDS cases in New York are not diagnosed until the time of autopsy.

In many states, prisoners suspected of prior high-risk activity are victims of mandatory testing policies; in seventeen states and the federal prisons, all inmates are forced to undergo HIV tests. Several penal systems follow up testing with segregation or isolation of those determined to be HIV-positive, depriving them of work, recreation, rehabilitation, parole, and furloughs.

The National Commission on AIDS determined segregation to be "wholly without public-health merit." Segregation effectively targets HIV-positive prisoners for "assaults, discrimination, and disparate treatment," the commission's 1991 report warned.

The National Institute of Justice recommends "universal precautions" such as wearing gloves or surgical masks for all inmates' bodily fluids. "The guards should treat all prisoners as if they were HIV-positive, because every prisoner potentially is," Savage agrees. "This singling out of HIV-positive prisoners is criminal."

Between 1985 and 1987, the AIDS situation at Bedford Hills Correctional Facility in New York was characterized by "secrecy and denial, shame and fear, ignorance and ostracism, and poor medical care," according to Bedford inmates Judy Clark and Kathy Boudine. The prison's unwillingness to cope with the AIDS crisis prompted inmates there to start their own self-help projects, education workshops, and counseling services. Now, the inmate-run ACE program (AIDS Counseling and Education) at Bedford has begun to improve conditions and create an atmosphere of trust and caring for HIV-positive inmates. It has become a model for peer programs across the nation.

Still, inmates face bureaucratic obstacles and opposition from prison officials in their efforts to motivate and empower other inmates. Prisoners who have been involved in organizing efforts have found themselves locked down or placed on "diesel therapy" – transporting shackled inmates from prison to prison is the way officials quiet troublemakers. James Magner, publisher of a newsletter called PWA-RAG (Prisoners With AIDS – Rights Advocacy Group), has been relocated more than twenty times in the past two-and-a-half years.

"It's really important for those of us on the outside to support the peer programs," Potler asserts. "A number of them end up going underground because they don't get support from the institutions."

The Progressive is available free to prisoners from *The Progressive*, 409 E. Main St., Madison, WI 75703.

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From The Editor

By Paul Wright

Welcome to another issue of *PLN*. Longtime readers of *PLN* may recall that *PLN* was banned by the Texas DOC in July of 1990 as they claimed we were not a "publisher." We appealed the decision and it was upheld by the DOC. In the last year we have gone back and forth with the TDC on this matter and I'm pleased to report that we finally prevailed and as of August of this year there is no longer a blanket ban of *PLN*. So I would like to welcome our Texas readers and subscribers back after this long absence.

As I write this the September issue still hasn't gone out yet so I don't know what the response will be to the usual plea for donations. Hopefully it will be a generous response. Our biggest expenses with *PLN* are the postage costs and the actual printing costs of copying each issue. We try to cut our costs as much as we can so we can continue to publish. Our copying costs are now averaging around 4¢ per page, for 40¢ a copy of *PLN*. We need to cut our copying costs as much as possible. To that end, is there anyone in the Seattle area that has access to a copying machine that is willing to copy around 300 copies of *PLN* a month for us at costs or less? If so, please contact Ed or myself about this. *PLN* is registered as a non-profit corporation in Washington state which may help for tax purposes. Any suggestions on helping us cut copying costs would be appreciated as well.

We have a number of readers who are in control units and death rows across the country. We realize that they are not in a position to earn money or make donations which is why we don't expect donations from them, but if you are in a control unit or death row and getting *PLN* and can afford a donation or can ask your friends of family to make a donation on your behalf to *PLN* it would help us meet our publishing costs.

In the last issue of *PLN* Ed wrote an article concerning the class implications of prisoner litigation in response to a letter from a reader in Illinois. I agree with the article and think it can be applied to all disenfranchised sectors of society. Right now the largely Republican judiciary is hostile not only to the rights of prisoners and criminal defendants but also to those of women, the homeless, unemployed, minorities, and the poor in general. Gains made in the courts in the 50's and 60's have turned out not to be lasting. Something to remember is that laws are not neutral or equal. Whoever controls the economic and political power in a society is the one that writes the laws, usually to protect and reinforce that power and privilege.

Some of the most heinous and barbaric practices have been codified into law. In Nazi Germany the infamous "Nuremburg Laws" made Jews into second class citizens and set the stage for genocide. In this country Jim Crow laws provided the basis for a legal racial segregation of the U.S. and in South Africa Apartheid is codified in the 1948 Apartheid laws. Normally whenever a military or similar group overthrows a popular or elected regime the first thing they do is change the constitution or pass new laws legitimizing their seizure of power. Then when these tyrants decide to relinquish the formal trappings of power, like the fascist Pinochet dictatorship in Chile, the juntas in Argentina, Uruguay, etc., they always pass laws granting themselves immunity for the atrocities they committed. These are the most obvious examples of "the law" serving the dominant class or power in society. We should bear this in mind any time we go to court.

We always welcome feedback and comments on our articles and coverage. On the same note, we welcome submissions from our readers. Please write and let us know what's going on in your prison, state, etc. We always need to increase our subscription base so please encourage your friends and family members to subscribe. Prison readers note that our library rate is now only $25.00 per year. If you can, encourage your prison library to subscribe to *PLN* so it will be available to a wider body of readers.

PLN is anti-copyright so feel free to copy and distribute *PLN* on your own and reprint our articles. If you do reprint, please give our address so people can contact us direct. If you move or are moved, please be sure to notify *PLN* as soon as possible so you don't miss any articles. Enjoy this issue of *PLN*.

In Total Resistance

In Total Resistance is the newest (1991) abridged and revised edition of the writing and poetry of Leonard Peltier (native American prisoner of war), Standing Deer and Bobby Garcia and others. It has updates on the efforts to secure Leonards release from prison as well as letters and poems going back to the mid 70's. Leonard has been convicted of killing two FBI agents at the Pine Ridge reservation in South Dakota. He is an activist with the American Indian Movement and in prison has been a staunch defender of prisoner rights. The booklet gives a good portrait of both the native and prison struggles and is available for $4.00 from: Seattle Leonard Peltier Support Group, P.O. Box 2104, Seattle, WA 98101.

Tacoma Court Commissioner Removed

Mark Adams who has served on the state Court of Appeals in Tacoma for fifteen years was demoted in December of 1990 by the Courts four judges after learning that a judicial misconduct complaint had been filed against Adams. The complaint alleged that Adams put "his hands in his pants pocket in the presences of female court employees which they perceived as inappropriately touching his genitals; asking female court personnel to arrange dates for him; discussing with female court personnel his out of office dating activities; keeping a personal diary which included references to his personal sexual experiences and other behavior."

In 1982 Adams was charged with a misdemeanor offense of criminal trespass after being caught looking through a neighbors window, that was disposed of through a deferred prosecution. After the 1982 incident Adams was allowed to remain on the Court because the judges did not believe it would happen again and did not affect any decisions he made a commissioner.

There are only seven court commissioners in the state. They wear black robes, hear motions and make decisions subject to review by judges.

To settle the complaint Adams agreed never to serve in any judicial position in any state without first getting the judicial commissions permission. Adams is still working at the Court of Appeals, but now as a staff attorney.

Seattle Times, August 27, 1991

Oregon Board Rules Held Ex Post Facto

An Oregon prisoner challenged the application of newly adopted parole board rules to his case. He sought review of the board's action in the state Court of Appeals, saying the board should have applied the review rules that were in effect when he committed his offense, in 1985, not the rules adopted by the board in 1990.

The new board rule being challenged was not merely a procedural change, the court held, as "application of the rules in effect in 1990 eliminated petitioner's opportunity to have his prison term reduced..." "Accordingly," the Court said, "application of [the new rules] to petitioner is contrary to the **ex post facto** clauses."

Washington state's recently adopted board rules, as well as board rules in the federal system and many other states, may suffer from a similar constitutional defect. See: *Williams v. Board of Parole*, 812 P.2d 443 (Or. Appl. 1991).

Help Yourself Legal Information

By Paul Wright

Part of the purpose of *PLN* is to try to help prisoners help themselves when it comes to using the courts to extend democracy to all and to vindicate our civil rights. We pretty much concentrate on federal court rulings and actions, because they can be used in any federal court across the country, rather than state law that is binding only in that state. And we also consider the fact that many state courts are not responsive at all to prisoners complaints about prison conditions while the federal court § 1983 is the much used lawsuit of choice by prisoners because it provides the means for federal courts to review the deprivation of federal rights by state officials.

We get numerous requests for legal assistance from our many prison readers and non subscribers as well. Everything from "how do I file a lawsuit" to questions about specific practices by a state's criminal statutes. While we would love to be able to help everyone that writes to us the fact remains that Ed and I are still prisoners and in pretty much the same boat as the rest of our prison readers are in. Publishing *PLN* and keeping up with civil rights litigation in our respective prisons as well as our work on other legal and political projects pretty much take up all of our time.

What we try to do with *PLN* on the legal front is to help prisoners help themselves. I can tell you from my own experience that no one is as concerned about your rights as you are. To be able to safeguard your rights you need to know what they are and then how to seek relief from a court if they are violated. The vast majority of us have no specialized legal training and what we do know we've picked up by studying it in prison and going through the trial and error process of doing litigation. I think a good reason every prisoners should know a bit about the legal system is to be able to seek relief from the courts themselves, even when assisted by a jailhouse lawyer there is the possibility that a court deadline will come up and one or the other of you will be in the hole, the person helping you do the lawsuit or yourself are transferred, paroled, etc. If you are responsible for your own litigation that isn't a problem and you won't wonder if you lost your case because the person doing it didn't care about it, etc.

There are a number of books and publications available with the prisoner litigant in mind. Virtually all law books and publications are pretty expensive, that's because the market for them consists of lawyers, legal groups and libraries, all of which have money. By contrast the materials for prisoner litigants are usually written by public service attorneys and are either free or modestly priced. Here's a rundown on the basic materials that I know of that are available to prisoners. If I haven't seen them myself I will say so. Before ordering you should write the address given and find out if the prices are still up to date, if the title is in stock and also see about getting their whole catalog if they have one. You also may want to check your prison law library and see if they have the materials and if they don't, maybe they can be encouraged to purchase them for use by the entire population.

"The Prisoners Self Help Litigation Manual" by Dan Manville is the bible of prison litigation. It covers everything from prisoners basic rights, how to file a lawsuit and a habeas corpus action in federal court and everything else you need to know to file your lawsuit and get it going in federal court. It applies to both federal and state prisoners. While it is a little dated now, having been last revised in 1983, it is still the most comprehensive and complete book of it's type. It costs $20.00 and is available from: Oceana Publications, 75 Main Street, Dobbs Ferry, NY 10522. Another similar book is *"A Jailhouse Lawyers Manual"* published by the Columbia Human Rights Law Review, Box 54, Columbia University School of Law, 435 West 116th St., NY, NY 10027 for $8.00. This book has a lot of materials and information dealing with New York state law as well as federal law that is useful to New York prisoners. Both books have sample forms, explain how to do legal research, make legal citations, etc.

Also available from Ocean Publications is *"Post Conviction Remedies: A Self Help Manual"* also by Dan Manville for $16.50. It details the use of habeas corpus to get out of prison.

"The Rights of Prisoners" is a small paperback by the ACLU that gives a brief rundown and discussion on prisoners rights and also cites cases where the rights were developed. The book is free to prisoners and available from: ACLU, 132 West 43rd St., New York, NY 10036.

The National Prison Project at 1875 Connecticut Ave. N.W., #410, Washington D.C. 20009 is part of the ACLU and is in the forefront of prisoners rights litigation across the country. They offer their quarterly *"Journal"* for $2.00 a year to prisoners, which I highly recommend for it's articles, analysis and citations of recent court decisions. They also offer other valuable resources such as *"The Prisoners Assistance Directory"* for $30.00, bibliographies of AIDS in prison, bibliographies of women in prison issues and a *"Primer for Jail Litigators"* for use in challenging conditions in county jails.

The Lewisburg Prison Project, P.O. Box 128, Lewisburg, PA 17837 publishes several books on prisoner suits in federal courts, explaining liability of prison officials and they have collected sets of their *"Bulletins"* that deal with topics such as medical treatment, disciplinary hearings, assaults, AIDS, etc. Filled with case cites as well as analysis they are all very reasonably priced in the $6.00 to $8.00 range though the bulletins are getting a little old last being published in 1987 they are still a good starting point.

Continued on page 6

Help Yourself *continued from page 5*

The Prisoners Rights Union, 1909 Sixth St., Sacramento, CA 95814 publishes and sells *"The California State Prisoners Handbook"* for $43.00 (which I have not seen) that is intended primarily for California prisoners in gaining and asserting their rights. They also have available materials from Inside/Out Press that consist of pre-written motions and similar self help materials most of it designed mainly for CA prisoners. The prices seem a bit high but I haven't seen them myself.

"The Citebook" is a legal assistance manual that consists primarily of case citations on a fairly wide area of federal law dealing with criminal and civil rights. It is a good book to have when you need some quick reference points. It costs $16.95 and is available from Starlight General, P.O. Box 20967, St. Petersburg, FL 33742.

Nolo News, 950 Parker St., Berkeley, CA 94710 doesn't deal specifically with prisoner rights or criminal law but is intended to help citizens with common legal problems like doing wills, divorces, small claims courts, patents, etc., as well as an entire book on doing legal research. Most of their books are reasonably prices as books go, mainly in the $15.00 to $30.00 range. They have a free catalog available.

"Criminal Procedure Project," Georgetown Law Journal, 600 New Jersey Ave. N.W., Washington D.C. 20001 is an annual publication by the Georgetown University law school, it is about 1,300 pages long and contains a breakdown and extensive citing of all significant criminal cases and prisoner rights cases that year. It only costs $5.00.

"Criminal Law Outline" costs $12.00 and is available from The National Judicial College, University of Nevada, Reno, NV 89557. It is 186 pages long and lists all Supreme Court cases (no appellate or district court rulings) dealing with the 4th, 5th, 6th and 8th amendment rights of defendants and prisoners. An excellent starting point.

Legal Associates West, P.O. Box 255784, Sacramento, CA 95865 offers several publications designed to help prisoner litigants file a 1983 suit, appeal it if they lose in the Court of Appeals as well as to the Supreme Court. The books are written by William Ravenscroft, an attorney and the director of L.A.W. He also wrote the article on doing writs for certiori that appeared in the August *PLN*. All the books contain forms and answer most questions. They are priced in the $10.00 range for prisoners.

This listing is not meant to be all inclusive. If you know of any materials designed for prisoner litigants that are still in print and available let me know about them so I can inform our readers.

Materials For Imprisoned Parents

The Clearinghouse at Pacific Oaks has a large number of publications and materials available at very low costs that deal with children who have parents in prison and prisoners with children. Many of the materials are bilingual (English and Spanish) and deal with everything from the legal rights of imprisoned parents, to getting public assistance, Parenting handbooks, different studies on prisoners with children, mothers in prison, life after prison, etc. For more information and their catalog, write to: The Center For Children of Incarcerated Parents, 5, 6 Westmoreland Place, Pasadena, CA 91103 or call (818) 397-1300.

Prisoner Allowed To Possess Petition

A New York state prisoner at Attica was infracted after prison guards found and confiscated a petition complaining of prison conditions in his cell. The prisoner was infracted for possessing the petition even though no prison rule or regulation banned or prohibited possession of petitions. Richardson filed suit in U.S. district court claiming violation of his first amendment right to petition government officials and his right to due process of law that he be given prior notice of prohibited or banned conduct.

The District Court agreed with the prisoner on several counts. The Court found that Richardson's right to due process was violated because he was infracted and punished for an activity which was not banned or prohibited. The Court also denied the prison officials motion for qualified immunity. See: *Richardson v. Coughlin*, 763 F. Supp 1228 (SD NY 1991).

Search Of Prison Visitors Without Probable Cause Illegal

Lenora Daugherty is the wife of a Tennessee prisoner who was subjected to a visual body cavity search and a search of her vehicle in 1988 as a condition to be able to visit her husband, no contraband was found during the searches. Daugherty filed suit in U.S. District Court claiming violation of her Fourth Amendment right to be free from unreasonable searches and seizures.

The defendant warden filed a motion for summary judgement on a qualified immunity defense claiming that Daugherty's right to be free from body and vehicle searches without probable cause was not clearly established in 1988. The District court ruled such rights were clearly established and denied the motion. The warden appealed.

On appeal the Sixth Circuit Court of Appeals affirmed the lower court ruling that the warden was not entitled to qualified immunity. At pages 784-787 the courts analyzes a number of cases involving searches of prison visitors that all required individualized reasonable suspicion before such a search could be carried out. See: *Daugherty v. Campbell*, 935 F.2d 780 (6th Cir. 1991)

Tim Anderson Free

PLN readers may recall previous stories concerning Tim Anderson. Tim was convicted in 1979 of bombing the Hilton hotel in Sydney, Australia in a failed assassination attempt of the Indian prime minister, killed instead were a policeman and two sanitation workers. In 1986 Tim was released from prison and cleared of the charges after further investigation revealed fabricated police reports and a complete lack of reliable evidence. Tim received a large sum of compensation for the seven years he spent in prison. Then in 1989 he was again arrested and charged with the same crime using the same detectives and jailhouse informants. Tim was convicted and again sent to prison. On June 6, 1991, the Australian Court of Criminal Appeal overturned the conviction and acquitted him stating the governments case was "fragile," "unreliable in significant respects," and that the whole proceeding was fundamentally unfair. For more information on what's happening in the Australian criminal justice system write: Framed, P.O. Box K365, Haymarket, NSW 2000, Australia.

Percentage Of Black Prisoners Grows

In mid-July, 1991, the U.S. Department of Justice released a study titled Race of Prisoners Admitted to State and Federal Institutions, 1926-86. The results of the study are no big surprise. In 1926 78% of state and federal prisoners were white, 21% black, and 1% were listed as other. Then, year by year, the percentage of confined white prisoners dropped while that of black prisoners regularly increased. By 1986 only 55% of state and federal prisoners were white, while 44% were black (those listed as "others" remained at 1%).

The more than 100% increase in the ratio of black to white prisoners (21% black in 1926 and 44% black in 1986) cannot be explained by general population trends. The number of blacks relative to the general population was about the same in both years, 10% in 1926 and 12% in 1986.

Copies of the above report can be obtained from the Justice Statistics Clearinghouse, U.S. Department of Justice, Box 6000, Rockville, MD 20850.

Getting Counsel Appointed In Civil Rights Cases

By Paul Wright

The vast majority of prisoner rights cases are initiated and filed by prisoners representing themselves. This is due to a variety of reasons but the primary one is that most prisoners are poor and cannot afford an attorney to represent them in court on civil claims.

28 U.S.C. § 1915 (d) allows the federal district court to request an attorney to represent an indigent plaintiff in a civil action. The Supreme Court recently held that "request" means just that, that a judge cannot order a lawyer to represent someone. While there are no funds available for the court to hire an attorney to represent an indigent, 42 U.S.C. § 1988 provides that winning plaintiffs in civil rights cases can be compensated for costs and attorneys fees. Many state bar associations have strong pro bono programs where member attorneys donate a certain amount of time a year to represent poor people, be it the homeless, prisoners, low income tenants, etc., so in most cases if a judge asks an attorney to represent an indigent they will find one.

Whenever you file a civil rights suit it's a good idea to file a motion asking that counsel be appointed to represent you. A lawyer is trained in the law and has the resources to litigate a case much faster and better than a prisoner does. There is also the fact that pleadings submitted by an attorney have more credibility with the court than those submitted by a prisoner.

The Ninth Circuit has ruled: "Appointed counsel, whether state or court provided, offers a meaningful, and certainly the best, avenue of access to an indigent inmate. An attorney is in a better position than the inmate or inmate writ writer to promote efficient and skillful handling of the inmates case." Storseth v. Spellman, 654 F.2d 1349, 1353 (9th Cir. 1981).

The Ninth Circuit has also acknowledged that while the district court has the discretion to appoint counsel in civil actions such motions should only be granted in "exceptional circumstances." See: *United States v. McQuade*, 579 F.2d 1180, 1181 (9th Cir. 1978).

While some courts have held that there is no comprehensive definition of what "exceptional circumstances" are and that it will turn on the specific factors of the case, such as the type and complexities of the case and the ability of the individual bringing it, see: *Branch v. Cole*, 686 F.2d 264, 266 (5th Cir. 1982), other courts have set forth what factors should be considered by the lower court in ruling on a motion to appoint counsel.

The Seventh Circuit has held that while no "right" exists to counsel in civil proceedings a poor persons access to the courts should not be turned into an exercise of futility. The factors to be considered by the lower court are: (1) Whether the merits of the indigents claim are colorable; (2) the ability of the indigent plaintiff to investigate crucial facts; (3) whether the nature of the evidence indicates that the truth will more likely be exposed where both sides are represented by counsel; (4) the capability of the indigent litigant to present the case; and (5) the complexity of the legal issues raised by the complaint. See: *Merritt v. Faulkner*, 697 F.2d 761, 764 (7th Cir. 1983) and *Maclin v. Freake*, 650 F.2d 885, 887 (7th Cir. 1981).

While such motions are not granted too often in some districts, others appear more willing to appoint counsel. In any case, it doesn't hurt to ask. If you lose in the district court and appeal you should renew your motion for appointment of counsel there. "Exceptional Circumstances" that weigh towards counsel being appointed that you should bring to the courts attention are being able in a control unit with no access to a law library, not being able to read or write, not being physically able to prepare pleadings and such due to injury or illness, etc.

Even if counsel is not appointed by the court most state bar associations have referral programs where they will provide you with the names and addresses of lawyers that handle that type of case. You should also try contacting civil rights groups and legal aid organizations in your state, explain your problem and ask for help. In personal injury and medical cases and such looking through the yellow pages for attorneys who specialize in such cases and contacting them doesn't hurt. You should always make an attempt to get a trained lawyer to handle your case, if you write the bar association, individual attorneys, and petition the court for appointment of counsel the worst that can happen is they will say no and you won't be any worse off than when you started, while if you succeed you'll be in a much better position.

FBI To Collect Records On Juveniles

The U.S. Justice Department has plans to authorize the FBI to gather juvenile offense records from the states. Law enforcement officials and prosecutors generally expressed support for the proposal.

Current Justice Department rules allow the FBI to collect juvenile offenses records only in cases where the youth was tried as an adult. The new proposal, announced in the June 5 issue of the *Federal Register*, would authorize the bureau to accept records about offenses committed by youth who were adjudicated in juvenile court.

Most of the public comments were in opposition to the rule. The complaints were that the rule undermines the long history of treating juvenile offenders differently from adults, that it is too loosely written and would allow records to be kept on minor offenses, and that FBI files on juvenile offenders could hamper any efforts by the youths to obtain employment or otherwise become law-abiding members of society.

Continued on page 8

FBI *continued from page 7*

The rule would purportedly exclude non-serious offense records, but "it would in fact allow retention of records pertaining to such incidents as school yard fights and shoplifting," said Lenore Gittis, attorney in charge of the New York Legal Aid Society's Juvenile Rights Division.

From: Criminal Justice Newsletter, 7/15/91

Community Service Sentencing Found Effective

Requiring criminal offenders to perform a certain number of hours of community service is a sentencing option that can be administered effectively, and which appears to produce recidivism rates no worse than those produced by terms of incarceration, according to a study by Malcolm M. Feely and Richard Berk of the University of California School of Law at Berkeley.

In view of the significant cost savings of community service sentencing compared to jail terms (the average monthly cost for imprisonment was $1,416, compared to $97 for community supervision), it perhaps should be expanded to include higher-risk offenders, the researchers recommended.

Community services is an increasingly popular sentencing option, especially as courts look for alternatives to overcrowded prisons and jails, Feeley and Berk noted. By the mid-1980s, approximately 9 percent of all federal offenders on probation were serving terms of community service, they said. But community service sentencing is "largely an untested idea subject to few careful evaluations."

The single biggest problem with community service sentencing is that the court must rely on work performance reports from the agencies for which the offenders work. Many of the agencies that take on offenders "do not want to assume a law enforcement function," the researchers found. "They do not want to compel recalcitrant 'volunteers' to fulfill their obligations, or even report substandard work performance."

From: Criminal Justice Newsletter, 8/1/91

NCADP Conference In Seattle

The National Coalition to Abolish the Death Penalty (NCADP) will be holding it's annual convention in Seattle on Friday, November 1st through Monday, Nov. 5, 1991. The conference will be held at the Meany Hotel in the University District and will have a number of workshops that include topics such as: Women and the death penalty, Coping with death penalty crazy politicians, Understanding the legal process, learning the game at your state legislature and more. For information on attending, contact Teresa Mathers at (206) 623-1302.

Death Penalty Resources

By Paul Wright

With the NCADP conference being held in Seattle this is a good chance for citizens to learn more about the death penalty and its inherent injustice. One of the often overlooked aspects of the death penalty is that in the criminal law field death penalty litigation is at the cutting edge where new decisions and court opinions are being made that affect all criminal defendants, not just those actually facing the death penalty. The U.S. Supreme Court in particular has used death penalty cases to roll back what had been considered well established rights and it is continuing to do so.

In many ways the death penalty is a microcosm of the criminal justice system as a whole, with the racially disproportionate number of minorities facing the death penalty, the virtual absence of the wealthy from death row, and the horrible conditions most prisoners must live in while awaiting the death penalty. Recent years have seen a restoration of the federal death penalty and then its expansion to a whole new area of offenses, even those that do not involve the loss of life. Right now 36 states have the death penalty and Nebraska and Massachusetts are both seriously considering reinstating it. The New York state legislature has passed death penalty bills several times in recent years only to be vetoed by Governor Cuomo.

Right now we are seeing defendants caught between the rock of a vastly expanded death penalty and the hard place of diminished legal rights and Court scrutiny, especially in the federal courts review of state proceedings, of the fairness and legality of how the death penalty was imposed. That some 40% of current state death sentences are overturned by the federal courts shows the level of existing problems.

In June of 1972 the U.S. Supreme Court in *Furman v. Georgia,* ruled the death penalty as then applied was arbitrary and capricious and in violation of the 8th Amendments ban on cruel and unusual punishment. That decisions spared the lives of some 700 men and women across the country.

Four years later though, the Supreme Court in *Gregg v. Georgia,* upheld the new revised death penalty statutes which were then adopted in many states that have the death penalty. Since then 146 people in 16 states have been executed (Florida and Texas account for 65 of the murders) and some 2,500 men and women now await that same fate. Nothing much has changed in the 20 years since the Supreme Court found the death penalty unconstitutional. Of some 20,000 murders committed by private citizens each year in the U.S., only a tiny percent will face the death penalty if apprehended. Statistically those most likely to face the death penalty are people of color that kill a white person, those least likely are whites who kill blacks. And of course, rich people just don't seem eligible for the death penalty at all.

There's a number of groups and organizations across the country that oppose the death penalty and are seeking to abolish it, these range from civil rights groups to churches and religious organizations. Anyone interested in more information on this topic should contact the following:

- National Coalition Against the Death Penalty, 1325 G St N.W., Washington D.C. 20005 has a wide variety of resources, to include books, videos, speakers and their bi-monthly newsletter *"Lifelines"* available.
- *"Endeavor."* P.O. Box 23511, Houston, TX 77228 is a quarterly tabloid newspaper written and published by the prisoners on death row in Texas. It includes stories, poems, news, etc.
- Texas Abolition Network, 5429 Goodwin Ave., Dallas, TX 75206 is an abolitionist group in Texas, they publish a small monthly newsletter called *"The Network News"*

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Death Penalty Resources *continued from page 8*

and regularly report on death penalty developments in Texas and elsewhere.

- The Washington Coalition Against the Death Penalty, 705 Second Ave., #300, Seattle, WA 98104 is a Washington state group which seeks to abolish the death penalty in this state, they publish a quarterly newsletter and have speakers and other resources available.
- NAACP Legal Defense Fund, 99 Hudson St., Suite 600, New York, NY 10013 has a free book called *"Death Row, USA"* and a variety of resources available including a very detailed statistical and individualized breakdown of just who is (and also important, who isn't) on death row.
- Southern Prisoners Defense Committee, 185 Walton St. N.W., Atlanta, GA 30303 also does death penalty work in the Southern states. At this time I don't know what they have to offer in the way of publications and such.
- The Quixote Center, P.O. Box 5206, Hyattsville, MD 20782 has a variety of resources available, the best thing being *"A Saga of Shame"* which I have reviewed in previous issues of *PLN*. It gives an excellent history of the death penalty in the U.S. and its racial bias and abuses.

– Letters From Readers –

Legal Advice Available

I have received and read a number of issues of *"Prisoners Legal News,"* in doing so, I've taken notice of the many requests for general legal assistance through information. Through my work and that of Mr. Fred Calhoun, Above the Ground Ministries, P.O. Box 1064, Lakewood, CA 90714-1064, we have formed an assistance project where incarcerated persons may write in their legal questions which in turn would be answered by myself through the ministry. However, due to the numerous states having different law, I generally answer with respect to federal "constitutional" law. I also author *"The Lakewood Law Journal."* Here, issues of constitutional questions are answered. Generally it addresses issue s of incarceration and conditions.

As assistance to prisoners I also author the *National Information Magazine* on Civil and Criminal Justice by the National Committee on U.S. Corrections, P.O. Box 308, Farmington, MI 48332.

The old saying that no one cares is untrue. We do care and seek to assist you where possible. It's up to you to write in and make your request known.

Robert Lee Hall
Legal Correspondent
Above The Ground Ministries

Prison Repression In Spain

The prison Meco is 30 kilometers from Madrid. It is a maximum security super prison where torture is most often practiced against the prisoners. Currently they have stopped beating prisoners a little but there is all kinds of problems, such as censorship of mail, communication with friends and even family members. All of this has been complained of to the Judge for Prison Vigilance but the judge always, except for a rare occasion or tow, rules in favor of the prison directors, that is how "justice" functions here in Spain.

The situation in the prisons here has not changed, we [**Editors note:** political prisoners] are still dispersed and some prison officials are trying to hire social prisoners to murder political prisoners. All of this is being done with the governments consent. But it has turned out badly for them as the majority of social prisoners are on our side and an organization of social prisoners, which includes the most militant prisoners and those in control units, that is to say, like us, have issued a communique threatening to kill any prisoner that harms a political prisoners.

Jose Jimenez Fernandez
Penitentiary Hospital
Madrid, Span

Resistance To Oppression

The struggle to maintain principles that we live our lives by. The conscious support of our political beliefs in the face of calculated deterrence. Refusal to conform to standards set by the controlling parties, despite coercion. Any political prisoner, politicized social prison or POW knows what this is about. I live in a very repressive environment, a control unit prison in America's gulag archipeligo. A prisoner's rights activist, anarchist, anti-imperialist north American prisoner. I face constant tactics geared to undermine my beliefs, integrity and attitudes. The stability is resistance, constant, unyielding, and timeless. We who live the resistance are never going to compromise our positions. The struggle today requires unity and communication between people in prison, the streets and other countries. Fascist influence has manifested itself in the form of policed states and peoples' rights are under constant attack by the new Supreme (travesty) Court conservatives. Resistance is survival of who I am. Sell-outs live the lies that would cause endless sorrow to one who believes in his self and cause. Resistance is the life blood, oppression the Angel of death.

T.F.
Crescent City

Notary Update

I'm writing in response to the letter from Lucasville, Ohio, about notarization. I'm copying this as I have it written down in my legal file: *Prison Law Monitor*, 3PLM, February 1981 – Expense of notarizing statement can be avoided.

Also includes ideas that are easily seen as more important for incarcerated vets than others. One such idea is the following which can eliminate the necessity of finding a notary public, often not readily available in prison.

It is usually a good idea to send sworn, notarized statements of witnesses or applicants to the review boards. However, notary publics are not always available and usually charge a fee for their services.

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Letters From Readers *continued from page 9*

Congress passed a law in 1976 (28 U.S.C. § 1746) that says if a statement and if the signature is accompanied by the language noted below, then the statements will have the same "force and effect" of a sworn statement. Whenever a notary public is not available so that a sworn statement can be submitted, include the following sentence and then sign it.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on (fill in the date). I also write 1976 (28 U.S.C. § 1746) under the date.

I hope this little item may help some people out. I carry a copy in my I.D. case. Been carrying it since 1981 and have used it about a dozen times. I've had no trouble by using it.

R.N.
Walla Walla, WA

The Prison/Community Alliance (P/CA) is a group of Washington state prisoners and concerned citizens whose goal is to abolish the Washington state Indeterminate Sentence Review Board, AKA the parole board, and bring all indeterminate sentence prisoners under the new SRA guidelines. The courts and the legislature are unwilling to abolish the parole board, so the way the P/CA is focusing on doing this is the ballot initiative, to let the voters of the State of Washington decide whether or not they want the parole board.

P/CA does not need money, they need people willing to get involved and make their voices heard. PLN will cover new developments as they occur. To get involved or for more information please contact: P/CA, P.O. Box 276, Kent, WA 98035.

Prisoners' Legal News
P.O. Box 1684
Lake Worth, FL 33460

Prisoners' Legal News

Working to Extend Democracy to All

Vol. 2, No. 11 November 1991

Washington Supreme Court Rules On Lifers

John Midgley, Attorney At Law

As most prisoners in the system now know, the Washington Supreme Court in August handed down its decision in the "lifer" case, *In re Powell, et al.*, 117 Wn. 2d 175 (1991). In *Powell*, four persons convicted of first degree murder before the advent of the SRA challenged application to them of SRA guidelines (through a 1989 Legislative enactment, SHB 1457) because such application increased the amount of time "lifers" had to serve before they became eligible for parole.

Under the law in effect at the time of the crime, lifers were eligible for parole after serving twenty consecutive years minus good time and upon getting a "certification" from the warden that they had been good and should be paroled. Under SHB 1457, the Indeterminate Sentence Review Board was required to set SRA-based minimum terms for lifers. Many of these ranges were longer than 20 years. In the cases of the petitioners in *Powell*, the terms ranged from about 25 to 31 years. Other "lifers" have had much longer terms set. Only after this longer than 20-year term is served will a "lifer" be considered for parole.

What this meant in human terms is that many prisoners who have worked hard and done excellent time for many years and who were preparing for what they thought was fair consideration for parole were told instead that they had to do even more time in prison before they could even be considered. Families that had waited patiently for years were disappointed; prisoners who had done everything expected of them – and everything their predecessors had had to do – saw their justifiable expectations dashed.

The petitioners in *Powell* challenged this harsh legislative change in the Board's implementation of it as an **ex post facto** law because it made detrimental changes in the time of first parole eligibility. There were other challenges as well: SHB 1457 called for "updated" judge and prosecutor recommendations, and these "updated" recommendations were for more time than was originally recommended. Two of the petitioners challenged the prosecutors' new recommendations because they had plea-bargained for a 20-year recommendation, and the "updated" recommendation was for longer. There was also a procedural due process claim on the "updated" recommendations: they were done without any notice to the prisoner or opportunity to be heard; in one case, for example, the original judge who had heard the trial evidence had recommended 20 years, but the "updated" recommendation by a new judge who had not been the trial court was for 90 years. The prisoners also raised other equal protection and due process arguments.

The Washington Supreme Court came within one vote of completely invalidating SHB 1457 on **ex post facto** grounds, as four of the nine Justices would have done so. The five-member majority, however, granted **ex post facto** relief to only one of the petitioners, one who had happened to have served his 13,4 and gotten a superintendent's certification before the effective date of SHB 1457. As to the others, the court said that although application of SHB 1457 did appear to require that more time be served before possibility of parole, that actually SHB 1457 **helped** lifers by eliminating the need for a superintendent certification. The majority's rationale was that since certification was discretionary and the warden **might** refuse to certify, elimination of the need for a certification was actually helpful because at the end of the SRA-based minimum term parole would be considered without the need for a certification. The majority also said that the prosecutor was required to re-establish the 20-year recommendation where such a recommendation was part of a plea bargain, but denied all of the prisoners' other claims and emphasized that the Board did not have to change anyone's prison time.

The Washington Supreme Court majority's opinion is, we believe, contrary to prevailing federal law. Most striking, however, was the majority's failure to explain two things. One, the majority failed to explain why SHB 1457 was **ex post facto** as to the prisoner who by luck of his time start had gotten a certification, but not as to the others, who were deprived by SHB 1457 of the chance to get a certification once they had done their minimum time. Two, and related, the majority failed to recognize that SHB 1457's elimination of the opportunity to get a certification, and therefore elimination of that chance to become eligible for parole at an earlier date than the prisoners could under the application of the longer, SRA-based minimum term required by SHB 1457.

By the time this article is published, a federal court challenge to this application of SHB 1457 will have been filed. In the meantime, "lifers" are left under a sentencing regime harsher than either the one under which they were convicted or the SRA. Under the old system, "lifers" knew they might have to do life but at least knew they could ask for parole after "13,4" (20 years minus good time). A person now convicted under the SRA will get more than 20 years, but will be released when his or her time is up. The "lifers" hit by SHB 1457 get the worst of both worlds: They do SRA time, but even then they must face the possibility they will not be paroled. Hopefully the federal courts will see that under SHB 1457 "lifers" are clearly being given extra punishment not imposed at the time of the crime, and will grant relief.

Continued on page 2

WA Supreme Court *continued from page 1*

Please note: If you are a lifer in any of the following categories, you **do** have a basis for getting some form of relief. First, under the *Powell* decision, if you were certified parolable by the superintendent before July 23, 1989 (the effective date of SHB 1457), you are entitled to consideration of parole under the old law, that is as soon as your 20 consecutive years minus good time has been served. Second, if you are a lifer and the Board has ever found you "parolable" at a ".100 Hearing" or at any other time, the Board has conceded that you should **not** be given an SRA-based minimum term but rather should be considered for parole as appropriate as if such minimum term had never been imposed. Third, if you plea bargained for a 20-year prosecutor's recommendation but the "updated" prosecutor's recommendation came back higher, you are entitled under *Powell* to reinstatement of the 20-year recommendation **and** reconsideration by the Board of your minimum term in light of the 20-year recommendation. If you are in any of these categories, you should contact the Board immediately.

Caging America

The U.S. Imprisonment Binge

By Patricia Horn

[*The following is an edited version of an article reprinted from the September, 1991, issue of* ***Dollars & Sense*** *magazine. It was edited by Ed Mead.*]

"The degree of civilization in a society can be judged by entering its prisons," Fyodor Dostoevsky once wrote. Look into California's San Quentin prison, Sing Sing in New York, or Angola Prison in Louisiana. All are bursting with record numbers of poor, jobless, uneducated, unskilled people – especially people of color.

Since the late 1970s the United States has locked up its citizens at an ever quickening pace, a course the National Council on Crime and Delinquency (NCCD) labels the "U.S. imprisonment binge." The number of people incarcerated in the United States shot up over 250 percent between 1970 and 1990. In 1990, the U.S. kept over 750,000 men and women locked up (not counting those in county and city jails), and the numbers grow daily. We are now the world's top jailer, surpassing the Soviet Union and south Africa.

Incarcerating more people doesn't stop crime. Even the fairest courts and the most just of prison systems only respond to crime, not prevent it. Most crime is rooted in social and economic discontent. Imprisonment is the "solution" of the conservatives. Not only is widespread reliance on incarceration a demonstrated failure, it is blocking many more humane, feasible, and cost effective options. Given the billions of dollars spent building and operating prisons, the human rights abuses such institutions inevitably foster, and the lack of real benefits to society, it is time to give alternatives a chance.

In the mid-1700s, European reformers, the most influential of whom was Cesare Beccaria in Italy, surmised that the certainty of punishment, not its severity, would deter crime. That principle became the driving force behind America penology and the idea of imprisonment. That philosophy reached its climax in 1989, when the U.S. Supreme Court approved federal sentencing guidelines that formally allow corrections departments to abandon even the pretense of rehabilitation.

The threat of imprisonment does not of course act as a deterrent, since most crimes are rooted in economics, drugs, or rage. "There is no relationship between the incarceration rate and violent crime," says Daniel O'Brien, assistant to Minnesota's commissioner of corrections. "We're in the business of tricking people into thinking that spending hundreds of millions for new prisons will make them safer."

Nor does the prison experience deter offenders from returning to the cell block. the California Department of Corrections estimates that 63 percent of released inmates return within two years. Common sense and careful research both show that prisons turn out people more prone to commit a crime than when they went in: Incarceration makes people "more alienated, more prone to violence, and less capable of re-entering productive society," argues the NCCD.

As Punishment, prisons are tremendously expensive. For most of the 1980s, corrections was the fastest growing item in state budgets. State prison construction budgets are up 73 percent since fiscal year 1987. The slow economy, shrinking tax revenues, and the federal aid cuts have all failed to dampen corrections budgets significantly. In FY 1991, states' corrections spending grew 12 percent over the previous year.

Even as their prison spending soars, many states are cutting social programs and higher education. California boosted its corrections budget approximately 11 percent in 1991— while cutting Aid to Families with Dependent Children by 9 percent and forcing the state university system to raise fees 20 percent.

In the 12 states that account for almost half the nation's prisoners, inmate populations will jump 68 percent by 1994. Cells built to hold one person now hold two, gyms and classrooms have become dormitories, and lockdowns to quell the inevitable disorders mean that prisoners commonly remain in their cells for up to 23 hours each day.

Lawsuits by or on behalf of prisoners challenging these

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Caging America *continued from page 2*

often volatile and unlivable situations mean that-41 states face court orders or a consent decree to limit overcrowding, thereby forcing states to build more prisons or find an alternative. In the words of the 1989 mission statement of the Texas Department of corrections, that state would need to build "one prison every eight months to infinity" to keep up with incarceration rates.

Whom do we spend billions to lock away? Disproportionately, they are poorly educated, unskilled, jobless men of color in their 20s. Nearly one in four black males between 20 and 29 is in prison or jail, on probation, or on parole –a higher rate of incarceration than that of black South Africans. More American black men go to prison that to college.

"Alternative sentencing offers a lot more promise than the prison system ever can," contends Marc Mauer, assistant director of The Sentencing Project, a national clearinghouse on such programs. "With alternative sentencing we have some hope of keeping family and community ties intact, in not improving them. We can provide the support people need. And we can repay the victim and community through restitution or community service work."

It is all about responding to crime in the most efficient and cost-effective manner. While prisons can't stop crime, alternative sentences won't deter it, and crime prevention will only come with a dramatic change in society's priorities. Still, alternative sentencing treats both victims and offenders more humanely, and it makes more resources available for building better communities.

Prison System Increases Cell Integration to Avoid Fines

Faced with the threat of millions of dollars in fines, the Texas Department of Criminal Justice began increasing the number of racially integrated, two-person cells July 1.

Before July, only about 2 percent of the system's 11,000 double cells were integrated; assignments were made on the basis of inmate preference.

The action came 14 years after the state signed a consent decree to end racial bias in prison housing and work assignments and five months after the U.S. Justice Department said it would seek contempt fines of $20,000 a day if the state did not develop a suitable plan. The decree requires that the prison system integrate 20 percent of the double cells.

The Justice Department in February threatened to seek sanctions against prison officials for failing to integrate the cells as called for in the consent decree. At the time, federal lawyers said they were prepared to seek fines of $50,000 a day for each cell that was not integrated.

The integration will affect only general population inmates. Many inmates already are assigned to racially integrated, dormitory-style prisons.

Members of racial supremacist groups will not be housed with members of another race. Nor will those who have been the victims of racial attacks in prison, of those with close relatives who have been victims of racially motivated crimes, officials said.

State officials acknowledged that some inmates may balk at living with someone of a different ethnic background. Leonard Peck, assistant general counsel for the TDCJ, told the Associated Press that inmates will be told: "We don't care how you feel about it; we're going to do it. So go write to your mothers about how miserable you are. But it is going to happen."

Peck said prison officials are committed to making the integration plan work.

"Inmates who try to sabotage this are going to have to pay," he said. "We have lots of ways of dealing with (insubordination) – loss of good time, loss of classification status and miserable work assignments."

From: Corrections Today

Pig Park Update

Readers of *PLN* will recall that we have previously reported the fact that the Washington State Penitentiary (WSP) in Walla Walla has bought 40 plus acres from the department of Wildlife for $80,000 which will be used as an "employee park."

According to an August 22, 1991, story in the *Walla Walla Union Bulletin* 4 acres will be used as a park while other parts will be used for training purposes such as obstacle courses and such to help WSP guards work the fat off "to help correctional officers meet minimum physical fitness requirements."

A two-story house on the property is already being used for weapons training. The warden, James Blodgett voices plans to share the entire training area with other area law enforcement agencies.

We ask our readers to keep *PLN* informed of new developments at the pig park. Send clippings and other relevant information to Paul Wright or send to *PLN* at the Florida address.

Abuses Continue At Ansar 3

Ansar 3 is a detention camp built by the Israeli government 70 kilometers south of Beersheba to hold the prisoners of the Palestinian Intifada. It is in the middle of the Negev desert and holds 6,000 prisoners at any one time. The following information is based on an interview with Israeli lawyer Tamar Peleg, of the Israeli Human Rights Committee that appeared in the September 9, 1991, edition of *Al Fajr*, a Palestinian newspaper.

When asked about the medical situation at Ansar 3 Peleg stated it was not satisfactory. By law everyone entering the camp is supposed to get a check-up by a doctor but that usually does not happen. Some critical cases are sent to hospitals but it is a slow and lengthy process and sometimes requires intervention by a judge to be done.

The detainees also have a general boycott of the camp's clinic because members of the Israeli security services have demanded that detainees become informants in order to receive medical treatment. They allow some critical cases to get treatment but in general follow their boycott.

Peleg states that the camp administration is interested in stability in the camp and tries to avoid confrontation between the soldiers and detainees.

While there is a place built for visiting none of the prisoners have received visits (visiting is supposed to start on October 8, 1991) because of difficulties in agreeing on an acceptable procedure. One solution already rejected was for the prisoners to give the administration a list of the people they wished to visit them and prison authorities would give it to the Civil Administration (the occupied territories of

Continued on page 4

Abuses Continue At Answar 3 *continued from page 3*

Gaza and the West Bank are in reality under military occupation but it is called a "civil administration," editor) to study and approve. Then the Red Cross would make arrangements to get the families to and from the camp. It was an Israeli sergeant in the camp who rejected this proposal.

According to a letter from Moshe Arens, the Israeli Defense Minister to Knesset member Haim Oren, the food given to Palestinian prisoners is to be reduced by 11.6%. Peleg states that as it is prisoners complain of the inadequate food. When he and other lawyers have taken money to give to the mess hall manager to buy food for the detainees they are always told that the manager isn't available and they can't leave the money there.

Asked: "What about the Court of Appeal?"

Peleg answered: "First, we cannot name them courts, and it's not a committee either because there is only one judge called the 'judge investigator.' That is, an examiner, and there are no witnesses and the lawyer cannot get his client's file. So, the defense is very limited.

"He gets a paper, written on it is the same accusation which is given to the defendant when the administrative order is issued against him and he receives it. The lawyer can ask questions of the Shin Bet (the Israeli internal secret police, Editor) man who is present in the hall. But the man is not committed to answer and he always says: 'I will tell this to the judge in our private meeting,' which the lawyer does not attend of course. The case remains top secret and the lawyer has no right to see it. The case depends on the judge investigator's point of view, and his point of view remains the only hope.

"We, the lawyers, try to find some legal flaw in the administrative order itself. Sometimes we succeed and sometimes not."

For more information contact: *Al Fajr Palestinian Weekly*, P.O. Box 19315, East Jerusalem, Via Israel or: 16 Crowell St., Hemstead, NY 11550.

Right To Practice Religious Beliefs

C.D. Mosier, an Oklahoma state prisoner, is a practitioner of Native American religious beliefs which prohibit him from cutting his hair. The Oklahoma DOC has a grooming code which requires that it's prisoners have short hair, however, exemptions can be granted for prisoners who document their religious beliefs. Mosier had an exemption at one prison but was transferred to another where his request for another exemption was denied. He then filed suit under § 1983.

The district court converted the defendants motion to dismiss into a motion for summary judgment which he granted for the defendant prison officials. The basis for the lower court's decision was that because Mosier was not a member of a religious organization his religious beliefs were not "sincerely held."

The Court of Appeals for the Tenth Circuit reversed and remanded. The court held that membership in a religious organization is not necessary for religious beliefs to be sincerely held.

The Court of Appeals did however note that since the Supreme Court's *Turner v. Safely* decision, prisoners have always failed in their challenges to prison dress and grooming codes on religious and other grounds. But the Court held the plaintiff in this case was still entitled to an opportunity to refute the defendants assertions. See: *Mosier v. Maynard*, 937 F.2d 1521 (10th Cir. 1991)

Unlawful Orders Cannot Be Enforced With Violence

A female California state prisoner was ordered to submit to a strip search by male prison guards. She refused to be strip searched and was Tasered. She filed suit under the Fourth, Eighth and Fourteenth amendments.

The District Court applied an Eighth Amendment analysis and concluded the Fourth Amendment was not applicable. The Court held: "If the jury were to find that plaintiff was ordered to strip in front of males under the circumstances set forth in the undisputed and disputed facts, plaintiff's refusal to do so could very well be a justifiable assertion of her Fourth Amendment rights. Force used to compel prisoners to comply with orders violative of those rights may well be found excessive. In other words, a prisoner can invoke a clearly existing constitutional right and say "no" to prison officials who are unjustifiably about to infringe on that right, without fear that force can be used with impunity in any event to compel her to give up that clearly established right."

The Court held that in 1988 the routine unclothed searches of prisoners by guards of the opposite sex violated the prisoner's well established right to privacy and right to be free from unreasonable search and seizure.

The Court also found the California DOC regulations reflected the current law and supported the plaintiff's contention that the strip search was unreasonable.

With regards to the tasering, the Court held: "An unjustifiable order to a female to strip in front of males cannot stand as justification for the use of force to carry out that order."

The Court held that the Eighth Amendment is of national concern and that state regulations on the use of force are not dispositive of the issue, though they may indicate what the national standards should be. See: *Valdez v. Farmon*, 766 F. Supp 1529 (ED CAL 1991).

Privacy Right Not To Be Viewed Naked By Opposite Sex Prison Guards

A Colorado state prisoner filed suit under § 1983 claiming violation of his rights to due process and equal protection when he was placed in isolation at a medium security prison and then transferred to another prison. The plaintiff also claimed that his right to privacy was violated when he was forced to shower in an open shower stall while being observed by female prison officials. The defendants filed a motion to dismiss and the District Court denied it in part and granted it in part.

The Court held that neither the Constitution nor Colorado prison regulations created a liberty interest in being classified or kept at one prison over another.

The Court held the plaintiff did state claim with regards to being put in segregation because the record was unclear as to whether it was segregation for punitive or administrative reasons.

Klein also stated a claim by alleging in his complaint that he was purposely singled out for harsher treatment than that accorded similarly situated prisoners. The Court also held that

Continued on page 5

Privacy Rights *continued from page 4*

Klein had a limited privacy right not to be regularly watched by prison officials of the opposite sex while he showered. See: Klein v. Pyle, 767 F. Supp 215 (DC COLO 1991).

Attention Former PAP Members

If you are a former member of the PAP or know the whereabouts of any past members, we'd appreciate hearing from you. Send any correspondence to: Jane Kuja, P.O. Box 507, Auburn, WA 98071.

Due Process Distinguished

A mobile home park owner sued the city of Rocklin, California, over a rent control ordinance claiming it was taking his property without just compensation or due process. The District Court dismissed the complaint. The Ninth Circuit Court of Appeals reversed and remanded the case back to the lower court. While this is not a prison case, the due process analysis applies to all government actions and give a clear explanation about the differences between substantive and procedural due process.

At 956: "A claim for violation of procedural due process has two components. First, plaintiff must show that a protected property interest was taken. Second, it must show that the procedural safeguards surrounding the deprivation were inadequate."

At 957: "Where, as here, the plaintiff alleges that the denial of due process consists of an official's arbitrary action, a claim for violation of substantive due process in undistinquishable from a claim for violation of procedural due process. Since the Supreme Court held in *Zinermon* that substantive due process claims are not subject to diversion to state court under *Parratt*, see 110 S. Ct. at 983, we need not consider whether the procedural due process claims, standing alone, would have to be so diverted."

"While a substantive due process claim may arise out of the same facts as a procedural due process claim, the claims are different in several important respects. Whereas a procedural due process claim challenges the procedure used in effecting a deprivation, a substantive due process claim challenges the governmental action itself. Because the harm of a substantive due process violation occurs at the time of the wrongful government action, plaintiff's Section 1983 action arises when the wrongful action is taken. *Zinermon*, 110 S. Ct. at 983. *Parratts* requirement apply to substantive due process claims. Id."

See: *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951 (9th Cir. 1991).

Prison Guards: Victims Or Villains?

Review By Paul Wright

This is the title of one of two articles in the latest issue if "Blueprint for Social Justice." Both articles are written by female former prison guards who describe their experiences working as guards in women's prisons. One of the authors is now a doctoral candidate at Yale, the other has written a book titled, *"Prison Officials and their World."*

Basically the authors state: "Prisons, especially violent maximum security prisons, have a devastating effect on the lives and minds of those who work within them. Dehumanizing attitudes and behaviors on the part of officers are consequences of their jobs, not characteristics that the vast majority of officers bring to **their** jobs. Attempts to portray officers as villains rather than victims distorts analysis of the prison world and deflects criticisms of prisons themselves."

The article also goes on to describe a study of 40 Massachusetts prison guards over a four year period. Most resigned within that period and all reported being unhappy about their jobs and the emotional devastation that it caused them, while those that stayed did so because they were from economically depressed communities and were unable to find other work, as one guard put it: "They are paying me good money to ruin my life."

The basic conclusion is that prisons are places of hate and despair that will not be changed into centers of "rehabilitation" merely by recruiting "better" prison guards.

As a prisoner it is interesting to read. In any struggle for change within the prison system we should always keep in mind that there are contradictions within the ranks of the DOC, especially between the guards and the administrators. In a recent lawsuit over conditions at the King County (Seattle) jail, prison guards joined the prisoners lawsuit for better conditions by arguing they were endangered by being forced to work in such overcrowded conditions. (The judge dismissed them from the suit by stating they could always go to work elsewhere.) In some cases guards are also treated badly by prison administrators such as massive overtime, low pay and benefits compared to other state workers, and generally when overcrowded conditions become unsafe for prisoners they also become unsafe for the prison guards working within the prison. While there are the abusive and sadistic prison guards, undoubtedly there are also those who work in prisons because they need to support their families and cannot find employment elsewhere, this is especially true in the small, rural economically depressed many U.S. are built in. These contradictions should be borne in mind.

For a copy of the article, send 55¢ to: Blueprint, Loyola University, Box 12, New Orleans, LA 70118-6195, ask for the September 1991 issue. Blueprint is free to prisoners and I would like to hear the views of readers who have read the article.

Reviews

AUTONOMI is an English language magazine published in Denmark with an autonomous and anti-imperialist outlook. The latest issue, number 6, has articles on political prisoners in the U.S., an update on the trial of members of the Communist Workers Group in Denmark who were convicted of committing various robberies to finance third world liberation struggles, information on the political situation in Denmark, on feminism, on the upsurge of fascism in Germany and a communique by the Red Army Faction. Autonomi is free to prisoners. Write: Autonomi, Blagardsgade 12, 2200 Copenhagen N., Denmark.

CURE Newsletter, CURE is Citizens United for the Rehabilitation of Errants, a national organization. It publishes a four page newsletter on a quarterly basis. Generally it concentrates on legislation and other news that affects prisoners. Subscriptions/membership are $2.00 for prisoners, $10.00 for others. Write: CURE, 11 15th St. N.E., #6, Washington, D.C. 20002-8436.

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leviews *continued from page 5*

CAPTIVE VOICE is a quarterly publication written by rish Republican prisoners of war being held in British, rish, European and American prisons. Each issue features iews on the prison struggle being carried out by the various 'OWs, political analysis and commentary, cross word puz-:les, artwork, quotes and letters from readers. It is mostly n English with some articles in Gaelic. *Captive Voice* is ıvailable in the U.S. and Canada from: An Glor Gafa, c/o NAC National Office, 4951 Broadway, New York, NY .0034. Readers in Europe and elsewhere contact: The POW Dept., 51/55 Falls Rd., Belfast, Northern Ireland.

Universal Suffrage: Give Us A Voice!

Tom Sparks

Univeral Suffrage was originally created to provide assis-ance to those convicted in the American justice system in he defense of those constitutional rights that are supposed o exist, and in regaining those rights that have been unjust-y lost. Our intention is not to offer "class action" suits to he courts that look nice and important in the press, but toss :very situation into one wastebasket that the widely con-;ervative "justice" system can eliminate in one motion; we vant to go after each case that is defendable, and give each one its deserved "day in court."

Unfortunately, it is impractical to directly assist anyone vith any case until we have an attorney to represent us at he location of the complaining inmate. It is a helluva task o line up an attorney for every prison, and we are wide)pen to all who will accept cases pro rate. Any reader who s such an attorney is invited to contact *Universal Suffrage* mmediately. All readers who have personal attorneys who nay consider such representation are encouraged to con-act those attorneys and refer them to us. Please refrain from ;ending case material to our central office; save it for an ıttorney who can represent your case directly.

While we seek to build such a network for future assis-ance, we must also concentrate upon the overall political ;ituation that has placed us in such a helpless position. The)nly way that we can expect to have any effect upon those ıolding power over us is to regain our ability to vote.

The **only** reason that any politician or civil employee has 'or assisting an individual is that such complainant has ;ome power over the official's job – and that power is vholly concentrated in the right to vote.

If you are a felon, you have probably already attempted o elicit help from your congressmen, senators, judges, DAs, etc. How much response have you gotten? If you had ı vote, be assured, you'd get a helluva lot more action!

The average citizen who complains to a government)fficial will get some kind of attention for having com-)lained, because politicians realize that those who :omplain are most likely to actively campaign for or against hem – something that we can never do! We are, therefore, gnored, given the runaround, or insulted, because we are ess than citizens.

It is our contention that no one should be denied the right o participate in the creation, amendment or eradication of aws because that person has been found guilty of having violated laws.

The Holy American Empire has found a very effective countermeasure to the respected tradition of non-violent civil disobedience, practiced by Mahatma Gandhi and Martin Luther King, Jr. to change the world that they knew; that deterrent is the simple strict enforcement of unpopular laws, and eliminating **forever** the legal voices of those who are found guilty of their disobedience. The guilty are permanently removed from the democratic process of change, and their opinions are rendered worthless to the government, the press and the public.

The present system upholds the status quo: laws are protected from change, and incumbent elected officials are protected from impeachment and strong opposition, by the permanent elimination of the voices of those who feel strongly enough to challenge them. Who is better qualified to consider the proper requirements of a judge, sheriff, district attorney or lawmaker than one who has been subjected to their "justice?" Who is more suited to determine changes in laws than one who has personally felt their effect?

This nation made great progress in the protection of individual rights in the 1960s. (It didn't do all that it needed, or that its people needed, but it was moving in the right direction.) In recent years, however, we have seen more and more erosion of those rights – to the point, now, of blatant **reversals** of previous Supreme Court decisions that had upheld our Bill of Rights. This steadily increasing attrition of individuals' rights has directly paralleled the alarming increase of convictions in the courts, and the prisons are overflowing.

This situation has already made serious inroads into the voices of those who defend individual freedom. If allowed to continue, it will eliminate us from consideration by mainstream society altogether – we will be powerless, subject to the whims of every traffic cop and local bigot who is aware that we (as convicted felons) don't even have to break a law to be imprisoned ... and more and more laws **will** be enacted – as has **already begun** – that require us to cowtow to the personal desires of the tyrannical majority!

Our only hope is to regain the right to speak at the polls. Whether we exercise our votes or not, the **potential** of those votes gives us credence to those in power, the **potential** of those votes gives us credence to those in power, and ensures that we will always be a **possible** force with which to be reckoned. Only a **citizen** can practice civil disobedience; only a **citizen** has a vote. One with no vote – with no voice it not even a **citizen!**

Help us to regain our voices! Stand with *Universal Suffrage* and fight for the right to be heard. We need attorneys, and we need activists to assist in compiling the voting laws of felons and prisoners nationwide, compiling information for our lobbying efforts and helping to further build our membership. Contact: *Universal Suffrage,* Box 35, Alto, Georgia 30510. If you would like to take an active role by pursuing one of the tasks outlined above, tell us what you can do. If an answer is expected from us, please enclose a SASE (every quarter counts).

Sheriff Can't Release Aids Test Results

While awaiting transfer from a county jail to an Alabama prison, a convicted prisoner was given the opportunity to voluntarily submit to an AIDS test. he did so, but only after being assured by the county health officials that the results

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Sheriff *continued from page 6*

of such test would remain confidential. The inmate was later personally informed of the test results.

A lawsuit was later brought to compel the county health officials to release the results to the sheriff, alleging that the inmate was threatening to scratch, bite, claw, or hurt any individual that came into his cell. An Alabama appeals court has held that, under state statutory law, the county health department is vested with the sole discretion as to whether to divulge confidential test results to third parties.

The court rejected the argument that the sheriff had to receive the results in order to comply with his duty to protect the health and safety of the inmates entrusted to his care. The state provides a mechanism for the sheriff to notify the health authorities of the existence of reasonable cause to believe that an inmate has been exposed to or is afflicted with any sexually transmitted diseases. "After such a communication," the court said, "it appears to become incumbent upon the health officer to act with regard to this information." *State Dept. of Public Health v. Wells*, 562 So.2d 1315 (Ala.Civ.App. 1989), cert quashed, Alabama Supreme Court, 1990.

Violent Crime Rate Up, Again

There was a sharp increase in violent crimes according to the final statistics for 1990 gathered by the FBI's Uniform Crime Reporting (UCR) program. The FBI reported murder and rape rates increased 9 percent last year, and robbery and aggravated assault rose 11 percent. The murder count reached an all-time high of 23,438.

The report said 49 percent of the murder victims were white, and 49 percent were black. More than half were related to or acquainted with their assailants. About one-third of the murders resulted from arguments, and about one-fifth were the result of criminal activity such as robbery or arson. Firearms were the weapons used in about 60 percent of the murders.

The UCR also includes figures about law enforcement personnel. In 1990, city, county, and state police agencies reported employing more than 523,000 officers and about 191,000 civilians. On average, there were 2.2 full-time officers per 1,000 residents, up from 2.1 officers per 1,000 in 1989.

The number of officers feloniously killed in the line of duty last year was 65, the lowest figure since the FBI began collecting that statistic in the late 1960s. Sixty-seven cops were killed accidently while performing official duties.

From: Criminal Justice Newsletter

Editorial Comments

By Ed Mead

Welcome to another issue of our little newsletter. The first thing I want to do this month is extend a hearty expression of good wishes to one of our favorite outside readers, Jonathan Nelson, who is today serving 30 days in the Island County Jail for protesting the recent war in the Middle East. More than a hundred thousand died, not for any great principle, but rather to protect the greater profits of the big oil companies. We salute all those who struggled against this unjust war.

Two months ago, in our September issue, my article titled "Remembering Attica" was published. The following month we printed a criticism of that article that was submitted by Beryl Sanders. There were other criticisms, too. First there was my factual error of saying Jesse Jackson was on the Attica observer team. He was not. During 1974 I worked for the Attica Brothers Legal Defense Committee in Buffalo, New York. I met Jesse Jackson during a national demonstration held in support of the Attica Brothers during that period. Somehow, I transposed Jackson's presence at the demonstration to his being present on the observer team. That's what happens when one writes about historical events from memory, rather than solid notes.

The second significant error of my Attica article was a political one. I chastised the observer committee for not remaining in D-Yard with the Attica Cons, when ordered to leave by the state, thus making it more difficult for then Governor Rockefeller to order the fatal assault on prisoners. I was wrong to have expected so much from the observers. The mere presence of the observers during the early stages of the revolt was a significant development. More I should not have expected.

Paul and I have sought to improve and strengthen all aspects of this newsletter from its inception. One ongoing weakness is that the pages of the *PLN* have too often been heavy with the dull writing of those who learned to write from reading law books. Much of this writing has been produced by me, a representative of the old-guard of prisoner activism. We are in need of new blood from younger prisoner writers who can use the language of today's generation of prisoners. If you or someone you know is at all willing to give us a try, then just send us some material to publish. Paul and I are particularly interested in more participation by national minorities in this paper's production process. There's no pay and the work is often demanding, but there is a high level of satisfaction at doing one's best to struggle for justice.

Our regular readers will probably be missing our monthly plea for financial contributions. We're giving you a brief respite from our incessant begging. *Resist* gave us a $600 grant, saying ours is the best prisoner-produced publication they've ever seen. The money is enough to operate the paper for three months; the praise will last us even longer. Much thanks and a tip of the hat to *Resist*. We have already spent $200 of the *Resist* money toward obtaining our non-profit tax status, a move that we hope will eventually reduce our postage costs by nearly two-thirds. So for everyone who can afford to do so, keep sending those contributions in to us. Incidently, thanks to your ongoing financial support, the *PLN* continues to pay for itself, just barely.

That's all for today. Hope you are enjoying this issue of the newsletter. If not, let us know about it. You pay for this paper; you let us know what you want. In any case, be sure to pass it on to a comrade when you are done.

Can't Search Visitor Leaving Prison

Prison officials suspected that an inmate's minor sister had been smuggling marijuana in to him during her regular visits. An officer was posted to watch the inmate and his sister during the next visit. He did not see them pass anything. At the close of the visiting period, a female correctional officer took the visitor to a private room where she was stripped to her underwear and searched. The search included feeling underneath the visitor's brassiere. Nothing was found during the search.

The visitor sued the officer and various prison officials for a violation of her fourth amendment right to be free of unreasonable searches. The trial court entered partial summary judgment for the plaintiff visitor and prison officials appealed.

The U.S. Court of Appeals for the Eighth Circuit affirmed. While the court had earlier, in *Hunter v. Auger*, 672 F.2d 668 (8 Cir. 1982), held that there was a prison visitor exception to the search warrant requirement, it found that the exception did not apply in this case.

"The scope of an exception to the warrant requirement is defined by the rationale of the exception," the court commented. In this case, the search occurred when the visitor no longer posed a potential threat to prison security, since her visit was over and she would not be able to pass contraband on to any prisoner even if she possessed any.

The visitor was searched after, not before, her visit. The court found that the defendants were not entitled to qualified immunity for their violation of her rights, since the rationale for the "prison visitor" exception (preventing the importation of contraband) does not exist after a visit is over. The court remanded the case back to the trial court to resolve the issue of damages. *Marriott v. Smith*, 931 F.2d 517 (8 Cir. 1991).

Search Of Legal Files Violates Consent Decree

A prisoner at the Iowa State Penitentiary filed a federal civil rights complaint in which he contended that the search of his legal papers by guards, outside his presence, violated a consent decree entered into between prisoners and their captors. The district court agreed and ordered officials to pay the court five hundred dollars for contempt, nominal damages to the prisoner in the amount of ten dollars, and attorney fees. The state appealed, but the U.S. court of appeals affirmed the ruling of the lower court.

The consent decree, entered into in an earlier case, contained language saying "[a]n inmate's legal papers will not be taken or searched outside the inmate's presence and observation." The lower court found, as a matter of fact, that the inmate's legal papers had been searched outside the prisoner's presence. The state, with the facts against it, argued issues of law on appeal, saying that section 1983 is not a proper remedy for enforcing violations of a consent decree, and contesting the contempt fine and the awarding of damages. The state lost on each count.

While this ruling will not support the proposition that a prisoner's constitutional rights are violated when his legal files are read outside his presence, it does point out the possibility of what remains to be achieved in this area of the law. This is an issue that needs to be implemented, either by consent decree or an expansion of the existing law on cops reading incoming legal mail. *See Welch v. Spangler*, 939 F.2d 570 (8 Cir. 1991).

No Minimum Wages For Convicts

Prisoners are not entitled to minimum wages or overtime pay, according to a federal appeals court.

Prisoners who worked in the plasma program operated by a private company (Cutter Biological) on prison grounds sued, asserting that they were covered by the Fair Labor Standards Act and entitled to minimum wages and overtime pay for this work.

Two members of the three judge panel disagreed with the inmates on the grounds that Congress simply couldn't have conceived of extending the Fair labor Standards Act coverage to inmates. Also, they ruled that inmates didn't meet the traditional "employer-employee" relationship test used to determine FLSA coverage. The third member of the panel disagreed, opening the door for more challenges on this ground. *Gilbreath v. Cutter Biological*, 931 F.2d 1320 (9 Cir. 1991).

Mandatory Sentencing Flops In Florida

Florida offers a classic example of how mandatory sentencing laws and large-scale incarceration of drug offenders can produce an unbalanced correctional system and possibly reduce public safety, according a new study by the National Council on Crime and Delinquency (NCCD), the San Francisco-based criminal justice research group.

"The legacy of Florida's drug wars and mandatory sentencing practices is a very chaotic and ineffective prison system where very little treatment, supervision or punishment is being administered," NCCD Vice President James Austin said in a recently issued report. "It is the worst of both worlds when nonviolent, petty property and drug offenders are sentenced inappropriately to prison while dangerous criminals are released early."

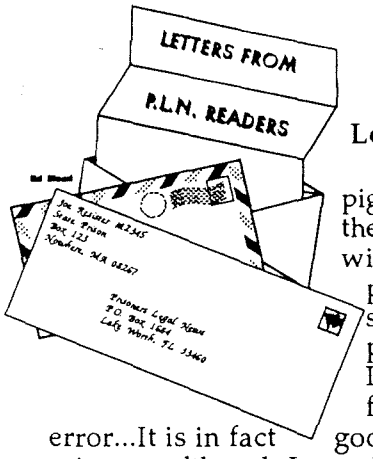
Using statistics gathered by the U.S. Justice Department and the Florida Department of Corrections, Dr. Austin made a case that Florida went overboard with mandatory sentencing laws and incarceration of drug offenders. In 1989, Florida prisons admitted nearly 6,000 offenders convicted of cocaine possession, for example. As a result of the tougher laws, state prison admissions more than quadrupled during the 1980s, from about 10,000 in 1980 to nearly 44,000 in 1989.

To accommodate the demand on the prison system, the legislature approved nearly $400 million to build 25,000 new prison beds. But "this dramatic building program was insufficient to meet the crunching avalanche of new prison admissions," Dr. Austin said.

The nearly $750 million that Florida spent during the 1980s building and operating additional prison space has not produced relief on crime rates, Austin Said. FBI Uniform Crime Report figures show that the state's overall crime rate increased 5 percent between 1980 and 1989.

"State officials are now trying to change these practices," Austin said. "It will take major reforms over a number of years to restore credibility to the state's penal system."

The 8-page report, *The Consequences of Escalating the Use of Imprisonment: The Case Study of Florida*, is available from the National Council on Crime and Delinquency, 685 Market Street, Suite 620, San Francisco, CA 94105.



– Letters From Readers –

Letter From Germany

I can't understand why these pigs have no courage to oblige their own masters to share the lot with them, instead harassing prisoners. I've read also the story about the T-shirt that the pigs didn't want to give to Paul. Pigs are like little children who fear a punishment after small error...It is in fact good to organize the "social" prisoners although I myself can't see any difference between kidnapped or captured (political or social) human beings. We were supporting some German PP's during their hunger strike in 1989. These RAF prisoners are betraying now each other for personal gain. The self-consciousness is the most important thing that a human being has to realize, no matter if he has been kidnapped of not. Consciousness can in jail be developed only through self education. First, prisoners have to refuse any form of cooperation or treason with their kidnappers. No matter how long the kidnapping takes. Some not-kidnapped people have more difficulties than many prisoners. Prisons are fascist institutions in which the ruling classes legalize slavery and destroy their enemies. The so-called "social prisoners" are those who face slavery and must therefore fight against their enslavement. The so-called political prisoners forget mostly that prisons are a part of the repression that the state puts into the hands of its henchmen. Prisons are used to criminalize poverty, underemployment, unemployment, etc. Every unemployed citizen may be enslaved and exploited (or destroyed) in prisons. The struggle for the destruction of all prisons is therefore an important contribution to the anti-fascist, anti-capitalist and anti-imperialist struggle that revolutionary people are waging every day. Prisons are the dead line between the ruling classes and the underprivileged. The ruling classes protect themselves and their criminal activities through the imprisonment of the underprivileged classes and all those who fight for the right and dignity.

Solidarity and sincerity are our weapons against forces of evil and death.

Power, Love, and Solidarity.

D.D., West Germany

Pelican Bay News

Hello from Pelican Bay State Prison – SHU. I have some legal news. The following prisoners, Bwana Millon, James X. Williamson, Thomas Fetters, and Nicholas X. Delamat have joined in a writ of mandamus petition in state superior court, county of Del Norte (case no. 91-141-X). The prisoners are African (Millon, Williamson, Delamar) and a North American anti-imperialist (Fetters) and have joined as co-petitioners to address lack of medical care, a futile administrative appeals system, and physical and verbal abuse by correctional officers. The struggle continues as author of this letter has been verbally threatened by law library personnel, and copies of this 50 page plus legal document were mixed-up when photocopied. Issues in the writ include direct violations of petitioner's civil and human rights. This control unit is so filled with abuses and corruption that a federal investigation appears warranted. I am appealing to the progressive community to write to the human/civil rights and governmental agencies of your choice about conditions at Pelican Bay State Prison – Security Housing Unit.

I have been trying to use the justice system. Pro se is a tough road but I am learning. *PLN* is very informative and also a boost to the resistance spirit. Please keep up the good work.

T.F., Crescent City, CA

Passin' Gas

Here at the Washington State Penitentiary's Intensive Management Unit (IMU) there is no end to the mental and physical torture being inflicted upon the inmates. The latest of which are the new use of force tactics being used by IMU staff since the placing of mentally ill inmates in IMU. These new tactics consist of large and dangerous quantities of a highly potent chemical agent called Oleoresin Capsicum. This chemical agent is highly used in IMU now for almost little or no reason at all. Any and all inmates refusing to come out of their cell every 72 hours for a "Mandatory Security Check" will be removed by IMU staff because of security reasons of course.

The worst part about the use of this chemical agent is that it affects other inmates living in the immediate vicinity, that have done nothing wrong. This has been pointed out to Supt. James Blodgett, and the Director of Prisons Larry Kincheloe, but they have no concerns about the unnecessary and wanton infliction of pain they cause. Yet they acknowledge that the smallest amount of this chemical agent can be felt. Myself and a few other inmates are taking steps in filing civil complaints and ask that other inmates that have been subjected to this kind of torture to contact me.

Clark L. Stuhr #947192
PO Box 520 (IMU C-5)
Walla Walla, WA 99362

Resist Gives *PLN* Grant

The board of *Resist* met on August 11th to consider proposals for funding. It was decided to make a grant of $600 to your organization for the costs of publication and printing of 3 months of your newsletter. We received very good references for your work.

Board members thought that your newsletter was one of the best that we've seen of those dealing with prison issues. We have funded quite a few over the years.

Enclosed you will find your check for $600, made out to your group, as well as a card to fill out and return to us.

Best wishes from *Resist* in your important work.

For peace and justice.

Nancy Moniz
for the Board of Resist

Loves Us

I love *PLN* and have read a host of prison newspapers and newsletters, yet *PLN* has 'em beat hands down! Keep up the good work. I will remain an avid subscriber as long as you will have me. I'm currently in Program Segregation and unable to earn any money. However, I manage to support my nicotine habit along with my correspondence costs. So please accept the enclosed contribution in stamps.

B.K., Waupun, WI

Continued on page 10

Info on FREE

Salutation and congratulations.... Yesterday I received my first copy of the *Prisoners' Legal News*, a victory all the same. I was impressed. [*PLN* only recently overturned a statewide ban on the newsletter in Texas.]

I have been active in several ongoing litigations here [a women's prison in Texas] and am pleased to announce Mrs. Anna Dobbyn's new efforts in an organization called FREE (Freedom Restoration through Encouragement & Education). This is another attempt to bring the Texas prisoncrats to justice for their ongoing violations. They are gathering citizens to lodge a lawsuit charging the Texas Prison System with fraud under the RICO Act. They need detailed grievances and/or reports from prisoners to back up their theories, as well as more citizen plaintiffs. It looks favorable. They can be contacted at: FREE, 204 Elmo Avenue, San Antonio, Texas 78225-2140; (817) 923-3178 [No collect calls, please]. Although Texas based, I encourage all to consider this prospect. I will of course keep the *PLN* advised as best I can.

The Prison/Community Alliance (P/CA) is a group of Washington state prisoners and concerned citizens whose goal is to abolish the Washington state Indeterminate Sentence Review Board, AKA the parole board, and bring all indeterminate sentence prisoners under the new SRA guidelines. The courts and the legislature are unwilling to abolish the parole board, so the way the P/CA is focusing on doing this is the ballot initiative, to let the voters of the State of Washington decide whether or not they want the parole board.

P/CA does not need money, they need people willing to get involved and make their voices heard. PLN will cover new developments as they occur. To get involved or for more information please contact: P/CA, P.O. Box 276, Kent, WA 98035.

I must close, I really just wanted to congratulate all those who were active in having the *PLN* "approved," or at least no longer denied, in Texas. My best regards to all.

K.B., Gatesville, Texas

Prisoners' Legal News
P.O. Box 1684
Lake Worth, FL 33460

Prisoners' Legal News

Working to Extend Democracy to All

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Monroe's Struggle Against Double Celling: A Status Report

By Ed Mead

A flood of new rumors have been flying hot and heavy on the double celling status here at the Reformatory in Monroe. Some of these reports say there has been a negative change in the district court's order barring double bunking; other rumors claim that judges in the U.S. Circuit Court of Appeals have "leaked" that they intend to rule against prisoners; and still another piece of gossip has it that the state is going to ignore the federal court order and just go ahead and double us up anyway, declaring some sort of emergency condition to give their contempt of court a fig leaf of legitimacy. What is the real story? I'll try to tell it as best I can. But first let me put the situation in a political context, and then explain a bit of history about this litigation, for those of you who are new to the never-ending legal drama known locally as the *Collins v. Thompson* case.

A term we hear often in both legal circles and in the establishment press is "finality of litigation." This catch phrase is usually used in conjunction with some state's efforts to murder (they call it "execute") someone. Just this morning there was a report on the radio saying that attorneys for Charles Campbell, a Washington state death row prisoner, had neglected to file some document within the specified period of time. As a result of this, the defenders of freedom and democracy, the same folks who brought you the Desert Storm show, were screaming "finality of litigation" and demanding that immediate steps be taken to start killing Campbell. Oh how they cry and moan about how this Campbell case has gone on and on, and still he isn't dead. Well, that is what they cry when they want to kill one of us.

What do they whine when they want to subject us to unconstitutional double bunking, against our wills, when the courts are consistently ruling against them? Do they still believe in finality of litigation? Why of course not. These "upholders of the constitution" are fighting a form of judicial house-to-house combat in the courts. The *Collins* case was filed thirteen years ago. The consent decree mandating single celling has been signed for over ten years. But that means nothing to our captors, for them there is no finality of litigation. Their opposition to the consent decree is now in the Ninth Circuit Court of Appeals for the third time in ten years! Where is their plea for finality of litigation now? They want finality of litigation when they want to kill us, but they do not want any finality in the courts when they are trying to subject us to cruel and unusual punishment.

I for one get a bit sick listening to these hypocrites snivel because some poor guy on death row tries to extend his miserable life for a few years by exercising his right to file a habeas petition, yet they won't ever stop trying to weasel their way out of a judicially enforceable agreement, their word of honor, entered into with prisoners.

And that's what this is all about. Reformatory prisoners filed the *Collins* case back in 1978. The suit covered a lot of areas, but was ultimately settled out of court on a consent decree. Prisoners dropped many legitimate issues we believed could have been won so as to settle for single celling. The consent decree guaranteed that the number of prisoners at the Reformatory would not exceed the number of cells. The ink was not dry on the state's promise before they started violating the agreement. We were not single celled until the late 1980s, and even then, with so much prison space available around the state that Washington was renting out more than a thousand prison beds to foreign prisoners, we had to drag them kicking and screaming into court before they'd finally single cell us.

Now they again want to "modify" (read "gut") the consent decree entered into with prisoners. Can they do it? My normal answer would be a resounding "no." The law relating to modifying a consent decree is both long-standing and difficult. Once you've entered into a decree you are generally stuck with the results. For more than fifty years the standard for altering a consent decree has been that the party seeking modification must show a "grievous wrong evoked by new and unforeseen conditions." See *United States v. Swift*, 268 U.S. 106, 119 (1932). But lately some federal circuit courts have been adopting a more relaxed rule in terms of what is required to modify a consent decree, particularly in cases involving state agencies. See, e.g., *New York State Association for Retarded Children, Inc. v. Carey*, 706 F. 2d 956 (2 Cir. 1983), *cert. denied* 464 U.S. 915 (1983). Now the U.S. Supreme Court is going to resolve the issue, in the case of *Rufo v. Inmates of the Suffolk County Jail* (Nos 90-954, 90-1004).

In 1971 the inmates of the Suffolk County Jail in Boston, Massachusetts, filed a suit claiming that the conditions in the jail violated their constitutional rights. A consent decree was subsequently entered into between the sheriff and prisoners in which the sheriff promised that prisoners would not be double-celled. Ever since then the sheriff, no doubt another one of those believers in finality of litigation, has been litigating in the courts in an effort to slip out from under his written promise.

Will the sheriff be successful in his bid to cheat prisoners? Some experts, such as David Fathi, staff attorney for the National Prison Project, says, "it is clear that the

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Monroe's Struggle *continued from page 1*

Sheriff seeks an even more liberal standard [than any court has yet adopted, i.e.,] – if a proposed modification would not result in conditions that are actually unconstitutional, it would be allowed." As Fathi points out, "[a] consent decree, like any agreement, is useful only if it is understood that both sides will be bound by it."

So whether prisoners are double-bunked at the Reformatory will turn on the outcome of the Suffolk County case pending in the U.S. Supreme Court. Logic and reason would dictate that the sheriff would lose, but given the dynamic of supreme court decisions in recent years, anything could happen. The case will be heard some time this term. If the decision is a bad one for prisoners, it will then have to be implemented on the local level by the lower courts. All in all, even if the Supreme Court's decision should go in favor of the sheriff, the process of double-bunking us will take at least six month to implement, more than enough time for prisoners to mount a judicial counter attack.

One thing the state will most likely not do is ignore the federal court order banning double-celling at the Reformatory. Should they ever do so, prisoners would probably refuse to collaborate in the violation of the court's order. Indeed, an argument could be made in support of the proposition that they would be defending the constitution against all enemies, foreign and domestic. In any case, the state is unlikely to claim any sort of emergency situation, as recent legislation provides an adequate safety valve in the event of overcrowding. The Sentencing Guidelines Commission is empowered to lower guideline ranges for crimes, and the governor is authorized to release prisoners who are six months or less from their normal release dates. Thus any claim of emergency problem would be difficult to prove when these legislative measures have not even been implemented.

Court Supports Supervisory Liability Claim

James Johnson, a prisoner at the Cummins Unit of the Arkansas Department of Corrections, appealed from the district court's dismissal of his § 1983 complaint. The complaint alleged that Johnson suffered an inguinal hernia, which was diagnosed in January 1984. The prison doctor recommended surgery to repair the hernia, and said it should take place immediately. The private company providing medical services to the prison, Health Management Associates (HMA), repeatedly put off the surgery until August, creating serious health problems for Johnson.

In his complaint Johnson alleged that the supervisory authority of Warden Sargent and DOC Director Lockhart over the medical staff of the prison made them subject to liability for deliberate indifference to his and other inmates' serious medical needs. The magistrate recommended the dismissal of the complaint against Sargent and Lockhart, who the magistrate concluded could not be held responsible because "respondeat superior is not applicable to § 1983 actions."

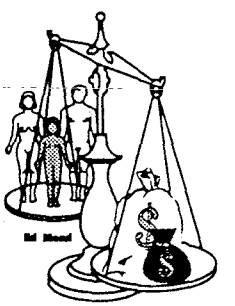
On appeal Johnson argued that because Sargent and Lockhart were charged with supervisory authority over the medical system of the Cummins Unit they therefore are directly liable under section 1983 for their failure to properly supervise, direct, and control the prison's medical system and staff.

The Court of Appeals found in favor of Johnson. The court said: "... although the doctrine of respondeat superior does not apply to § 1983 cases, a § 1983 claimant may maintain a theory of direct liability against a prison or other official if that official fails to properly train, supervise, direct, or control the actions of a subordinate who causes the injury. (Citations omitted.) Abdication of policy-making and oversight responsibilities can reach the level of deliberate indifference and result in the unnecessary and wanton infliction of pain to prisoners when tacit authorization of subordinates' misconduct causes constitutional injury."

With regard to the claimed adequacy of medical conditions in general, the court said: "We are not persuaded that appellees' assertion of the availability of doctors and the twenty-four hour infirmary policy at the prison answers Johnson's complaint. It is the disregard of the oversight responsibilities of providing needed surgery that is questioned here. Prison officials may not abandon their responsibility to supervise the availability of adequate surgical procedures for inmates." The court concluded that "Sargent and Lockhart had the duty to supervise and administer services at the prison, including medical services. Whether they were guilty of deliberate indifference in performing this duty remains to be decided." The lower court's dismissal of the complaint was thereupon reversed. *See, Johnson v. Lockhart*, 941 F.2d 705 (8 Cir. 1991).

[**Editor's Note**: The above case, and the issue of liability in general, should be studied by prisoners contemplating the initiation of rights oriented litigation. The single most common weakness contained in prisoner civil rights complaints is the failure to properly plead and establish liability, i.e., exactly how each defendant violated each right at question.]

PUT PEOPLE



BEFORE PROFITS

Executions Report Issued

Eleven states executed 23 people last year, the U.S. Justice Department's Bureau of Justice Statistics (BJS) announced on September 29th. The Bureau said as of December 31, 1990, there were 2,356 people being held on death row in 34 states. Between 1976, when the U.S. Supreme Court reinstated the death penalty, and last December 31, there had been 143 executions by 16 states.

According to the Bureau's annual capital punishment survey, 244 persons received death sentences throughout the U.S. last year, and 101 persons who had been previously sentenced to death had those sentences vacated by appellate or higher court decisions. Seven death row inmates died during the year. The number of persons under sentence of death at year end was five percent higher than at the end of 1989.

"Since the Supreme Court's decision in 1976 there have been 3,834 persons who have been under a death sentence," said Steven Killingham, bureau director. "The 143 persons executed represent 3.7 percent of those defendants who were at risk of being executed during the period," he noted.

All of the death row inmates being held last December 31 had been convicted of a murder. This population was 58.4 percent white, 40 percent black, one percent Native American and 0.6 percent Asian American. The 172 Hispanic prisoners accounted for 7.3 percent of the total. Thirty-two (or 1.4 percent) were female. Their median age was 34 years old.

Those put to death last year had spent an average of seven years and 11 month awaiting execution. Among those awaiting executions as of last December 31, the median time on death row was four years and eight months.

Texas had the largest number on death row – 320 such inmates. Florida had 299, California 280, Illinois 128 and Pennsylvania 121. About 58 percent of the total were held in the South, 21 percent in the West, 15 percent in the Midwest and six percent in the Northeast. As of December 31, 36 states and the federal government authorized capital punishment.

Since 1930, when the federal government first began keeping such statistics, there have been 4,002 state and federal executions under civil authority in the U.S. The most were in Georgia (380), Texas (334), New York (329), California (292) North Carolina (266) and Florida (191). Wisconsin, Rhode Island, North Dakota, Minnesota, Michigan, Maine, Hawaii and Alaska had no executions during this period.

Single copies of the *BJS Bulletin Capital Punishment, 1990* (NCJ-131648) can be ordered from the Criminal Justice Reference Service, Box 6000, Rockville, MD 20850.

From: Corrections Digest

Written Findings of Disciplinary Hearing Held Inadequate

An Illinois prisoner launched a 1983 challenge to the prison disciplinary hearing committee's finding of guilt on several infractions, including one charging him with conspiracy to murder a Unit Manager. The civil rights complaint alleged a number of constitutional infirmities in the disciplinary process, but only one issue was found valid. The U.S. District Court held that the disciplinary hearing's summary, the reasons relied upon in reaching its finding of guilt, did not contain an adequate justification for its finding of guilt. The committee's summary said:

"Based upon the statements by reporting employee and from investigative report that revealed that Washington was the legal coordinator of the Black Gangster Disciples at the time and did attend meetings that discuss (sic) the planning and attack of Robert Taylor, committee is satisfied violations did occur."

In reviewing the committee's findings the court said the summary did not state the evidence relied upon in determining the prisoner's guilt. Instead, it relies on general findings and conclusory statements of the type prohibited by the due process clause of the federal constitution. "Rather than pointing out the essential facts upon which inferences were based," the court said, "the committee merely makes reference to the disciplinary report and the special investigator's report." The judge also noted that the quoted summary failed to explain why the hearing committee discounted the accused's claims of innocence.

The basis for the court's holding was that the said summary did not provide a reviewing court with enough evidence to determine whether good time credits were properly revoked and thus, did not meet minimum requirements of due process of law. *See, Washington v. Chrans*, 769 F. Supp. 1045 (C.D. Ill. 1991).

Prisoners May Not Be Subjected to Freezing Temperatures

In 1982 outside temperatures at the Stateville prison in Illinois plunged to 22 degrees below zero with a windchill factor of 80 degrees below zero. The heating system in a cell block with 300 men malfunctioned and frigid air circulated through the cell blocks through broken windows, with ice forming inside the unit and the temperature well below freezing. This lasted for four days.

Two prisoners filed suit claiming their 8th amendment right to be free from cruel and unusual punishment had been violated by subjecting them to these conditions. At trial a jury agreed and awarded each prisoner $3,000 in compensatory and $2,000 in punitive damages. However, the district court entered judgment notwithstanding the verdict in favor of the prison officials on qualified immunity grounds.

After the above jury verdict two other prisoners filed suit over the same incident and their suit was dismissed.

On appeal the four cases were consolidated and the court of appeals for the 7th Circuit reversed, vacated and remanded the cases.

The court of appeals held that prison officials were not protected by qualified immunity because in 1982 prisoners had a clearly established right to be provided with shelter and adequate warmth. The court further held that a reasonable prison official would have known of a prisoners constitutional right to protection from extreme cold. As the court put it at page 1059: "Contrary to defendants assertions, constitutional rights don't come and go with the weather." The court also applied the Supreme Court's recently announced test of "deliberate indifference" from *Wilson v. Seiter*.

The court of appeals reinstated the jury's verdict and damages to the first two plaintiffs and reversed dismissal of the other two prisoners suit. See: *Henderson v. Derobertis*, 940 F.2d 1055 (7th Cir. 1991).

Prison Law Libraries Must Keep All Books Current

One of the questions presented in this case was whether a prison law library must keep current (update) those books that they are not constitutionally required to have. The case arose when prisoners initiated litigation, pursuant to 42 U.S.C. 1983, over the adequacy of the law library at the Washington State Reformatory. During the trial it was determined that the prison had a complete set of United States Code Annotated, but they only updated those volumes of the set listed on the American Association of Law Libraries' (AALL's) minimum requirements list. The trial court ordered that all books in the law library be maintained, including the entire set of U.S.C.A. The state then appealed.

The Ninth Circuit Court of Appeals upheld the ruling of the lower court. The appellate court used the following language in reaching its conclusions:

"...this circuit has not established specific minimum requirements that a law library must satisfy in order to provide adequate access (citations omitted). Because there is not constitutionally mandated minimum materials list, the district court cannot be said to have abused its discretion in issuing an injunction on requiring that all the materials at the WSR law library be kept current. Even if the injunction does exceed constitutionally minimum requirements, it is not necessarily improper. '[A] federal court may order relief that the Constitution would not of its own force initially require if such relief is necessary to remedy a constitutional violation' (citations omitted). Having found the library was not up to date, the district court did not overstep the bounds of its discretion in requiring the WSR to deep all books, whether or not on the AALL list, current."

In other words, if a prison law library has legal research materials (books, etc.) it is not otherwise required to have, it must nonetheless keep those books in an updated condition.

The thing readers should now watch for is any effort by prison officials to throw away or destroy those law books not on their minimum requirement list. If anyone catches a free person law librarian trying to toss out such research materials, they should let *PLN* know. To a judge, throwing out law books is something akin to what destroying bibles would be to a preacher. They don't like it. We have citations in this regard and, should the matter arise, will litigate that issue, too. *See, Mead v. Reed,* ___ F.2d ____ (Case No. CV-84-1566-WLD, 9 Cir., October 21, 1991).

The Criminalization Of Poverty

By Sabina Virgo

[*Sabina Virgo is an activist in the Los Angeles area. The following is an edited version of a speech given in L.A. on International Human Rights Day, December 8, 1990.*]

An anonymous poet in the 1700s once wrote, "The law will punish a man or woman who steals the goose from off the hillside, but lets the greater robber loose, who steals the hillside from the goose."

Talking about "the greater robber" seemed particularly appropriate in the midst of the biggest financial rip-off in the history of this country. I thought about the billions of dollars the Savings & Loan criminals stole, and about how most of them will get away with it. I thought about the complete insanity of how we define crime in our society. "Steal $5 you're a thief, steal $5 million – you're a financier."

Thirty percent of the wealth of this country is controlled by one-half of one percent of the people. Eighty percent of the wealth is controlled by ten percent of the people. I think that's a crime.

I looked up the word "crime." Crime was defined as "an act which is against the law." Crime applies particularly, the dictionary said, to an act that breaks a law that has been made for public good. Crime in one country, it continued, "may be entirely overlooked by the law in another country, or may not apply at all in a different historical period."

That was interesting. What that really said was that concepts of "crime" are not eternal. The very nature of crime is social, and is defined by time and by place and by those who have the power to make the definitions; by those who write the dictionaries, so to speak.

The more I thought about that, the more profound it became. The power to define is an awesome power. It is the power of propaganda. It is the ability to manipulate our ideas, to limit our agenda, to mold how we see, and to shape what we look at. It is the power to interpret for us the picture we see when we look at the world. It is the power to place a frame around that picture; to define where it begins and ends. It is, in fact, the power to define where our vision begins and ends; the power to create our collective consciousness.

That, after all, is what pictures do. They define what we see. They give us the painter's interpretation of reality. They give us illusion. The difference is that when we look at a painting, we know that we are looking at a painting – and we know that there must have been a painter. But when we are not looking at a painting, when we are looking at society, we've been convinced that the interpretations of society that we've been taught, are not interpretations. We think they are truth.

That kind of social propaganda is not only tremendously powerful, it is also mostly invisible. We can't fight what we don't see. Most of us accept the images and definitions that we have been taught as true, neutral, self-evident, and for always; so that the power to paint the future, to define what is right and wrong, what is lawful and what is criminal, is really the power to win the battle for our minds. And to win it without ever having to fight it.

In the 1830s, England defined the state of poverty as a criminal state. England created special prisons and called them debtor's prisons. In England, in the 1800s, not having enough money to pay to live was a jailable offense.

When we look at England during the Industrial Revolution, we see that an entire class of human beings was poor. An entire class of human beings who were created by the Industrial Revolution were both exploited and defined as criminal by the owners of technology, owners who had the power to both define crime and create poverty.

People went to jail, not for exploiting, but for being exploited. Then, as now, definitions of right and wrong, legal and illegal, are defined by those who make the rules and control the economy and the institutions of the country.

Though some of us may question the system's fairness in applying its rules, most of us don't question the basis of the system itself. That is, we don't question the relationship between those who own and those who don't. Though most of us vote every four years on who governs, we never

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The Criminalization of Poverty *continued from page 4*

vote on and rarely question "what governs." We don't challenge the legitimacy of the system, we accept it. We don't step outside of the frame around the picture. We don't disconnect the dots.

If we look at any downtown urban center, if we look at the lines of humanity waiting for food or for a bed at the missions, if we look at the faces of people living in cardboard boxes on the streets of the cities – we must know that a crime has been committed. When we look at the faces of dispossessed people, we see faces that look like people who lived here when California was part of Mexico. We see faces of people who fled here from Haiti and from Central America. We see the faces of people whose great-great-grandparents were abducted and brought here from Africa.

One-half of all African people born in this country live in poverty. That is a 69% increase in the last 25 years. One out two children born to African American parents is born in poverty, and one of every three seniors live in poverty. The life expectancy for a Black man in Harlem is less than for a man in Bangladesh. If we know that, we must know that a crime has been committed.

Bertolt Brecht, a German anti-fascist poet and playwright asked, "Which is the greater crime, the robbing of a bank, or the founding of a bank." That is not a question that was given to most of us in our homework assignments from school. The men who own the banks run the country. They run it to protect their interests and maintain their power.

In America, in 1990, it is a crime to be poor. If we're poor, the poorer we are, the more criminal we are. If we are so poor that we have no place to live, if we live on the pavement, or sleep in a car, or in a park, we have committed a crime. It's against the law to sleep on the streets or in a park. If we have no home, it's against the law to sleep.

The political decisions of the government, the investment decisions of the bankers are decisions about who will be poor. Corporate decisions made in the late '50s to remove industry from communities of color, were decisions about who would be unemployed. Decisions by developers about redevelopment are decisions about who will be homeless.

Those decisions affect each of us. But we have no say in them. We have no say in most social and economic decisions that affect our lives. That, somehow, is not part of our "democracy." And never has been. Because we have no say, creating homelessness is not criminal, but being homeless is. Runaway plants and plant closures are legal, but vagrancy is a crime.

And the definition of crime is limited. In the "victims bill of rights" the victim is someone who has suffered an individual act of violence. But when the act of violence is not committed by one person against another person – when it is committed by a government, when it is committed by multinational corporations, and when the victim is not a person – but is "the people" – then, not only is there no "victims bill of rights" – there is not even a trail. Because there has been no crime.

Because the criminals are in charge, they commit the crimes, capital crimes, every day. The jails are overflowing, but that doesn't seem to help – because the real criminals aren't in jail. They're in the board rooms and in the White House.

Under their misleadership, over five million of us are homeless, 37 million of us have no health insurance, 30 million of us are illiterate, 30 million more of us are functionally illiterate, one million of us are in prison, 20% of us live in poverty.

Under their misleadership we live in a world where the air and water are polluted, the earth is toxic and the chemicals that are poisoning us keep being produced.

Most of us don't feel safe or valued. Most of us are afraid, but we don't talk about it. We don't trust each other. We don't feel powerful. For most of us in America, the world we live in is out of control and threatening.

There is no reason our world and our lives have to be this way, but if we want it to change, we have to do it. We have waited hundreds of years for the people in power to change it and they haven't and they won't, because they created it and it serves them.

So the question before us is how to be more than a witness to crime. The question before us is how to paint a new, beautiful painting; how to build a powerful, caring, movement for change – an independent movement that can challenge power and can win. A movement that, if it won, would have a clear vision and a plan for transforming America; a plan to reindustrialize and rebuild, a plan for employment and education, for housing and for the environment. A concrete plan to deal with racism. And sexism. And addiction and pollution. So that we would know, concretely, what tomorrow could look like and would have no idea of how we would get there and how we would pay for it.

But before that kind of movement can be born, we need to reach out to each other and evaluate our work and learn the lessons it has to teach us. We need to talk to each other and find out what has kept us apart and how we can change that.

The time seems right for that. We seem ready to talk about why our movement is fragmented. To talk about why we have many organizations but little unity and few victories. Why we have individual leaders but no collective leadership. The time seems right to see why we are waging a piecemeal attack on a giant. Time maybe even to put the idea of winning back in our vocabulary.

We need to take time to talk so that we can build a movement that is focused enough and strong enough to create a human society that loves us. There is no more important work that we could do than to help bring that world to birth.

From The Editor

By Paul Wright

Welcome to the December issue of *PLN*. When you receive this issue the whole commercialized Christmas season will be in full swing. So in the spirit of giving, if you haven't donated to *PLN* yet this is a great time to do so. If you have donated in the past this is a good time to renew your support for *PLN*. *PLN* is supported entirely by donations from its readers, it is that money that makes it possible for us to print and mail each issue of *PLN*. We need your support to continue publishing *PLN* and keep up our work.

We are still looking for someone in the Seattle area that has access to a photocopier that can copy about 300 issues of PLN a month at cost or less. If you or anyone you know is able to help us out with this please contact either Ed or myself as this would be a big help in cutting our printing costs (our basic

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From The Editor *continued from page 5*

expenditures are printing and postage as everyone involved in PLN's production is an unpaid volunteer).

A number of readers have written and asked why *PLN* didn't publish any articles or positions concerning the nomination of Clarence Thomas for the Supreme Court. There were several reasons for this. One is that with our production schedule we can't comment on every issue of the day because by the time it gets to our readers it has become yesterdays issue of the day. We see *PLN's* role to be that of an alternative media, to cover the news and issues important to prisoners and their friends and families that are not covered by the mainstream media. Given the virtual saturation coverage of the Senate hearings by the tv and print media there is little that we could add to this either in terms of analysis or information.

Part of this view comes from the fact that even if Thomas hadn't been confirmed for the position another right-wing hack would have been. The trend to the wing reaction is firmly entrenched on the Supreme Court and I don't think that individual personalities will make much of a difference one way or the other.

The hearings concerning the sexual harassment allegations by Anita Hill did a lot to expose the sham nature of the whole process. It is sad that it takes an allegation of sexual harassment to raise any serious questions about a nominees qualifications or temperament to hold the position of Supreme Court Justice. Ignored in the titillating details of the Hill allegations were the fact that Thomas, as a mediocre law student, a career as a political hack in the Washington bureaucracy and only 18 months as a federal appeals court judge, is unqualified to hold the position. There is the question of his lack of integrity when, after being questioned by senator, he claimed to have no views or opinions on subjects such as abortion. Incredibly claiming he has never discussed, with anyone, his views on abortion.

More disturbing, and ignored by the Senate, is the fact that Thomas is a big supporter of Oliver North. Norths actions of lying to Congress and subverting the will and intent of Congress in prohibiting aid to the Nicaraguan Contra's is of an enemy of the U.S. Constitution. The Constitution that Thomas is supposedly sworn to uphold.

I found it quite ironic that Thomas admitted having smoked marijuana and his friends recounted his taste for pornography in order to "relax." Neither Bush nor long time racist right wing senators like Strom Thurmond and Orrin Hatch found this questionable.

There was the blatant use of race and racism in the whole process. The cynicism of Bush, the "anti-quota" president, in nominating the unqualified Thomas by saying in this land of 600,000 attorneys that he is the most qualified for the job and it was just a coincidence that he happens to be black, has to be viewed for what it is: an opportunistic racist ploy. With the highly respected Thurgood Marshall, the only black justice in history, stepping down, it was a further coincidence that Bush would choose another black person to replace him.

But we think that all of this is pretty much self evident to our readers. With our space limited to 10 pages due to postage considerations and to printing costs we need to prioritize the articles and contents of *PLN* to include that material and information that can assist our readers. Whining about Bush's choices for the federal judiciary is of little help to anyone. Now if Bush really surprises us and nominates someone like Lawrence Tribe (a progressive Harvard professor specializing in Constitutional law) we might have something to say.

Enjoy this copy of *PLN* and pass it on to others to read when you are finished with it. We remind our readers that our institutional rate for libraries and organizations is $25.00 a year. Prisoners please try to encourage your library to subscribe as this will help us broaden our base of readers and help us meet our publishing costs.

New York Prisons Profiled

A prisoners' advocacy group in New York City on September 27 released a profile of the state and city inmate population and found a pattern of minority offenders being increasingly locked up for nonviolent crimes.

The Correctional Association of New York said there are more than 57,000 inmates in state prisons, up from 12,500 in 1973 and 28,500 in 1983. It noted blacks make up a disproportionate half of the prison population, while representing just 12.4 percent of the state population. Hispanics make up about 32 percent of the inmate population and just 10 percent of the state population.

Robert Gangi, who heads the association, said the most prominent aspect of the prisoner profile was the high rate of offenders imprisoned in 1990 who were convicted of nonviolent crimes. According to Gangi, 60 percent of those sent to state prisons last year were nonviolent offenders, up from 30 percent in 1983. "Those statistics reflect a shift in law enforcement resources away from focusing on apprehending and jailing violent offenders," Gangi said. "We think it is a misguided policy."

"Many of the nonviolent people could be handled alternatively through a combination of drug treatment programs, alternative punishments or a combinations of both," Gangi said. "Such approaches would be less expensive and more effective in controlling crime and responding to the needs of the offender," he added.

Oklahoma Must Provide Adequate Funds For It's Public Defenders

In a highly significant case the 10th Circuit Court of Appeals ruled that by failing to adequately fund it's appellate public defenders the Oklahoma State Legislature deprives prisoners of their right to due process and equal protection of law under the federal constitution.

Robert Richards filed a Pro Se § 1983 action seeking declaratory and injunctive relief. In his suit he claimed that with only five full time lawyers handling non capital appeals for indigent Oklahoma prisoners it usually takes three years or more before an appeal is filed in the state court of appeals. While a prisoners that can afford private counsel can get his appeal filed within a matter of months.

The district court dismissed the suit by stating there was insufficient showing of substantial and immediate irreparable injury to give Richards standing to file suite.

The Court of Appeals for the 10th Circuit reversed and remanded the lower court. The court of appeals held that because Richards seeks injunctive and declaratory relief, not reduction of his sentence or reversal of his conviction, that § 1983 is the appropriate means for him to use, the court also held Richards had standing to pursue his claim. See: *Richards v. Bellmon,* 941 F.2d 1015 (10th Cir. 1991).

Consent Decree Creates A Liberty Interest

Stephen Rodi, a Rhode Island state prisoner filed suit under § 1983 claiming he had been put in administrative segregation without cause, notice or opportunity to be heard. The district court dismissed the complaint for failure to state a claim and on appeal the Court of Appeals for the First Circuit vacation the dismissal and remanded to the lower court for further proceedings.

The court of appeals held that a consent decree entered into by the Rhode Island DOC and prisoner plaintiff's (it had been a class action suit) in 1972 which set forth "emergency" conditions for prisoners to be put in ad seg, did in fact create a liberty interest, enforceable under § 1983, for Rodi to stay out of ad seg. Once the liberty interest has been created by the state the state must abide by its procedural protections.

At pages 26-29 the court goes into a lengthy discussion on how consent decrees, once entered into by both parties, are enforceable contracts. The state had argued that individual prisoners did not have an enforceable liberty interest because the ad seg rules in question were "court created" and thus "involuntary." The court said these arguments were "fanciful."

Prison officials were granted qualified immunity from damages because the rules in question had not been held to provide a due process liberty interest prior to this case. See: *Rodi v. Ventetuolo*, 941 F.2d 22 (1st Cir. 1991).

Guards Liable For Harassing Searches Of Cell

Although searches of a prisoners' cell do not violate the fourth amendment, they can be "punishment" under the eighth amendment. Searches of a prisoner's cell conducted in order to harass the prisoner in retaliation for exposing the misconduct of a guard constitute "punishment" under the eighth amendment and are therefore actionable under 42 U.S.C. 1983, the U.S. Court of Appeals for the Eighth Circuit held. Contrary to an argument advanced by the guard, physical pain is not an essential component of punishment, the court said. It pointed out that the U.S. Supreme Court recognized the viability of suits such as this one in the very case, *Hudson v. Palmer*, 468 U.S. 517 (1982), that established the inapplicability of the fourth amendment to searches of prison cells.

In this case the prisoner, Scher, informed on a guard who had asked where he might go on the streets to be able to obtain some illegal guns. Scher gave the cop the information he needed, in written form, then turned him in to the administration. The guard was busted leaving the prison with the directions.

The offending guard ultimately quit, but a fellow cop repeatedly searched Scher's cell; 10 times in 19 days. On three occasions the cell was left is disarray. Scher brought a pro se complaint alleging, inter alia, that the guard violated his eighth amendment right to be free from cruel and unusual punishment. The case went to the jury on that claim, and the jury found in Scher's favor and awarded him $1,000 in punitive damages.

The guard appealed, arguing that pain is a necessary element of an eight amendment claim and a cell search that involved no injury or abuse (pain) cannot constitute cruel and unusual punishment. The appeals court disagreed, holding that "pain" may be either mental and/or physical, and that in this case there was sufficient evidence of anguish and misery to invoke constitutional protection. *See, Scher v. Engelke*, ___ F.2d ___ (8 Cir. 9/11/91), 49 Cr.L 1541.

Prison Guards May Not Be Fired For Testifying On Prisoner's Behalf

Salvatore Ziccarelli was employed as a guard at the Cook County (Chicago) jail in Illinois. While there he became acquainted with a prisoner facing the death penalty. Ziccarelli voluntarily appeared, while off duty, on behalf of the defense to testify about the defendants character in the death penalty phase of the trial. The jail had an unwritten policy that prohibited guards from testifying about job related matters unless they were subpoenaed. The jail fired Ziccarelli when it learned he had voluntarily testified on behalf of a prisoner.

Ziccarelli filed suit under § 1983 claiming violation of his 1st Amendment rights. On cross motions for summary judgment the court ruled in favor of Ziccarelli.

Judge Marovich held that Ziccarelli's testimony on behalf of a prisoner facing the death penalty was, literally, "a matter of life and death" involving a matter of political, social and community concern and that the jail had no clear rationale or reason for discharging him.

The court also commented about it's suspicions of the jails "unwritten policy" barring court testimony of it's employees. The court noted there was no relationship between Ziccarelli's actions and the policy. The court stated: "We do not know why the department, as a matter of policy, would want to talk an officer out of testifying truthfully on behalf of a defendant at a death penalty hearing." See: *Ziccarelli v. Leake*, 767 F. Supp 1450 (ND IL 1991).

Prison Tobacco Sales Are Not Punishment

David Steading, an Illinois state prisoner filed suit under § 1983 claiming violation of his 8th amendment rights because prison officials had failed to provide a smoke free environment for all Illinois prisoners. The district court dismissed the suit and the court of appeals for the 7th district affirmed it.

Steading had sued the tobacco company that sold the tobacco to the Illinois DOC. The Court ruled that the tobacco company was not a "state actor" for § 1983 purposes just because it sold a product to the government.

The court of appeals analyzed Steadings claim under the Supreme Court's *Wilson v. Seiter* test where the prisoner plaintiff must show an intent to punish on the part of prison officials. The Court reasoned that because secondary tobacco smoke is common in offices, restaurants, etc., around the world "punishment" is not intended or taking place.

The court qualified its opinion by noting that the medical consequences of secondary tobacco smoke do not differ from other medical problems and prison officials "deliberate indifference" to prisoners tobacco smoke related problems can still give rise to an 8th amendment violation. See: *Steading v. Thompson*, 941 F.2d 498 (7th Cir. 1991).

Evidence Must Be Presented At Disciplinary Hearing

Eddie Griffin, a Pennsylvania state prisoners was infracted for possessing a fermented beverage. Prison guards destroyed the liquid in question prior to the disciplinary hearing. At the hearing Griffin was found "guilty" solely on the basis of the guards infraction report. Griffin then filed suit under § 1983 claiming violation of his right to due process under the 14th amendment.

The federal court ruled in Griffin's favor and awarded him nominal damages of $1.00 and denied the prison officials motion for qualified immunity ruling that the legal principles in questions were well established.

The court held that the prisoner has no way of mounting a defense when the only physical evidence against him has been destroyed and the finding of "guilt" is based solely on a prison guards oral summary of information implicating the prisoner. Prison officials claimed that they had a safety interest in disposing of the homemade liquor immediately (claiming 30-40 gallons a week were confiscated at one prison alone). The court pointed out that they need preserve only a portion of the claimed liquor which can be frozen until the disciplinary hearing to halt the fermentation process. See: *Griffin v. Spratt*, 768 F. Supp 153 (ED PA 1991).

No Liberty Interest In Prison Jobs

The 7th circuit in an en banc ruling, held that neither the due process clause nor Illinois statutes create a protected liberty interest in a prisoner holding one prison job over another.

Phillip Wallace is an Illinois state prisoner employed as a prison tailor earning $100 a month. Wallace was removed from this tailor job after homemade liquor was found in the tailorship. He was then employed as a prison clerk earning $30 a month. Wallace contended that his removal was improper because he was never infracted for misconduct and Illinois administrative statutes provide for job removal in a disciplinary case only after certain steps are taken. The district court dismissed the case finding no process was due to Wallace before being removed from his job.

On appeal the 7th circuit (en banc) affirmed dismissal. The court held that before due process protections are available a citizen must first show a "legitimate claim of entitlement" to the liberty or property at stake. The court ruled Wallace had no such right in his tailor job and goes into a lengthy discussion of due process protections and rights available to prisoners.

Two judges strongly dissented from the majority opinion and point out that the majority opinion is a variance with the rulings of other circuits that have considered the question of due process in prison. The dissent also argues that the opinion will have far reaching negative consequences for prisoners subjected to punishment by prison officials. See: Wallace v. Robinson, 940 F.2d 243 (7th Cir. 1991).

Civil Commitment

Carrie Roth, Prison/Community Alliance

The Special Commitment Center (SCC) is a block of prison cells in the Special Offenders Center (SOC) in Monroe, WA. Eleven men are now housed in the prison under the Civil Commitment law passed in 1990. Although the center is in a prison owned by the Department of Corrections (DOC), the Department of Social and Health Services (DSHS) is actually in control of the SCC.

The civil commitment law was written to indefinitely incarcerate men due to fear they may reoffend. No proof of current dangerousness needs to be brought before the jury. There need not be any current offense or even a subtle threat of reoffending. All you need to be referred for civil commitment is a sex offense in your records. You do not have to be doing time now on a sex offense. If you have ever had a sex offense on your record, you are a candidate for civil commitment.

There are numerous flaws in this law. It denies the right to due process and is used to re-try a man on his original crimes. The law was written so vaguely that there are no set guidelines for the courts or attorneys to follow. During the four trials to date, even the number of jurors has changed. The jury itself only has to determine one thing. All they need to determine is if this person is likely to reoffend. Likely is defined as 51% or more. The previous victims are made to 're-testify' to crimes which took place as long as 29 years ago. As the prosecutor 're-rapes' these victims, the jury perceives this as recent criminal conduct.

In actuality there is no way not to be committed under this law. The jury is made to believe the person will receive treatment as a sex offender and then released. They are misled by the prosecutor and the judge. If any one from the defense brings up this is for life, it is grounds for a mistrial. The law is based on 'prediction of future dangerousness' which studies show is wrong up to 90% of the time. Reversing the prediction of future dangerousness, how can anyone prove future 'non-dangerousness?' This is especially difficult when the passed years of a persons life in some cases have been spent in a controlled environment such as prison. (This is not always the case, by the way. The way the law is written, they can let you out of prison and have you arrested months later without even the suspicion of reoffending. This law has given the DOC ultimate rule over a person.)

There is no proven treatment for sex offenders. But yet the civil commitment law was written under the guise of giving treatment. The backgrounds of the staff are questionable. There has been no evidence that any of the treatment staff at SCC are accredited to treat sex offenders. The SCC staff has now put in writing that the people committed also do not have the right to outside help. They are completely dependent on the help of apparently non-trained personnel who are paid by the state. Which one of these state-paid personnel would be willing to stand before a judge and say this man is now safe to be out in society? If one did testify on behalf of the person, how long would he be employed if the person did reoffend?

Being in SCC is worse than being in Intensive Management status in the prison system. You are completely stripped of your rights. There is no six months or 1 year period to endure before you get out. You are completely dependent on the SCC staff. There is no chance of earning $20.00 per month. There are no hobbies. You have one hour per week of counseling with non-trained personnel. You are stripped searched as if in prison. You cannot have visits with your children. You shave when they tell you to. You cannot have a chair in your cell. There is restricted communication between prisoners. One person was told he

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Civil Committment *continued from page 8*

would not be 'cured' until he stops bringing lawsuits against the center. If you violate any of their 'laws,' you get put on a program. One prisoners 'program' was to sit in his cell with no lights on.

I have been following this law closely and I feel raped by the political predators who passed this law. I feel less safe because of the bandaid approach the 1990 legislature took to solve this problem. While they smiled and patted themselves on the back 'for a job well done' they assaulted the backbone of our country. They have stripped away each of our civil rights. We may not feel the assault now, but last years legislature has allowed a serious wound to fester. They did not solve a problem, they have created a new one. The most serious problem created is the total breach of confidentiality between offenders and their therapist or counselor. Granted, real therapists are few and far between in prison, but now even the offenders who are in counseling need to be careful what they say. Now anything they say can and will be used against them to civilly commit them for an indefinite length of time. Any real openness or admissions can now be used in a referral for civil commitment. This has stopped a lot of offenders from seeking help within the system and understandably so.

The Washington State Supreme Court will hear the law Dec. 5, 1991. It is my opinion the law was written with the intention of it being ruled unconstitutional. Whether it gets overturned or not it will have accomplished what I believe it was intended to accomplish. It got Governor Gardner off the 'hotseat' and appeased a small group of victims activists. It stopped the embarrassment of tennis shoes from being delivered to the governors door. I do not believe that while the state dumped its mentally ill and disabled people on the street back in the early '80s from state hospitals because they did not want to pay to help them, that they now want to pay $150,000.00+ per person, per year to lock up people who may never reoffend. In 1989 several news articles were written telling how money to build new prisons would have to come out of the state schools. We are now building new prisons at an estimated per capita cost of $117,000.000 per cell. While the legislature continues to take money out of schools and much needed social services, we are raising another generation of offenders. How much money will be taken away from schools, etc., before this group of self-serving legislators stop spending our tax dollars on warehousing people?

If our legislature is so willing to strip one person of their civil rights in their pursuit of the popular vote, what will they be willing to take from the rest of us?

If this law is allowed to stand, it will spread to all violent offenders. The civil commitment law is simply another form of indeterminate sentencing only much more subjective. We all know the faults of indeterminate sentencing, but what is to be seen is the costliness of the civil commitment law and how ineffectively our tax dollar will be spent if this law stands.

– Letters From Readers –

More On Plight Of The Young

This letter is in response to a letter to the editor printed in the September issue of the *PLN*, titled *"Plight Of The Young."*

The thing with brother Barry Massey, in particular – the U.S. judicial systems sanctioning of his life sentence without the possibility of parole for the killing of a Tacoma man – will never be understood if we leave it to emotions (or our subjective feelings). For years now, many state legislatures have been passing statutory laws that permit the courts to try, convict and sentence youth offenders (of Barry Massey's age and the like) to prison for life (or a practical life sentence). Some think that the legislature's action in this respect is chiefly caused by the public outcry for severe penalties to punish youths who commit gruesome crimes.

Very few (if any) individuals see the drive toward severe penalties as it relates to youth offenders as a part of the state prisondome's scheme to privatization. I think it is. I think that the trend toward privatization of U.S. prisons represents an acute crisis in capitalism. And, if I'm correct, the capitalists are banking on using some of the exact same elements of the community (and work-force) of the past who helped developed it in a desperate attempt to help salvage it at all cost. Slave labor and child labor did as much to help develop capitalism as the labor and wealth of the proletariat. The state is not as concerned with condemning Massey as an individual, as it is in exploiting him as a worker (state slave). I hope that *PLN* will consider doing a piece on this subject sometime in the future.

A.C., Angola, LA

Says He's Capitalist, Likes Us Anyway

I would like to introduce myself. I have been imprisoned in the federal system for over five years. As defined by Ed Mead, I am of the bourgeois class. To better understand my position, I am having my organization, *The League of Rights*, send you a book entitled *The Score* that I authored. Since my imprisonment in 1986, I have been transferred 30 times, I have been imprisoned at 18 different federal prisons, and I have spent over 900 days in the hole. All of this time I have accumulated 40 boxes of legal materials that the feds must store for my research. The above described "diesel therapy" is for my jailhouse lawyer work. I agree with Ed in his article *Class Implications* that "one simply cannot make meaningful progress by devoting her or his limited resources to merely getting individual prisoners out of prison."

While I do not agree with all of Ed's Marxist philosophy, I do admire *PLN*'s efforts and the way it is put together. I should be out in two months and if your team is willing to accept financial help from a bourgeois, I will be happy to be of assistance to your team.

R.S., Marianna, FL

Sneaky Rejection Method

Greetings and best wishes to you from the dungeon at Pelican Bay. I am writing because I did not receive my September *PLN*. My friend Glenn said he saw my name in the issue, so I am wondering where my copy is. I am having some trouble here with [the cops'] brainwashing tactics being used by these jarhead pigs on me. You know the oppressor. I have found a few items of mail (mostly political) that have turned up missing in the last few months. If

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you can send another September *PLN* I would appreciate it. The paper usually arrives in the first or second week of the month. So I have waited an extra week. I have my pen heated up and would like to write something for you. Please give me a topic and number of works, and I will expound.

I celebrated Attica Day in quiet prayer and respectful reflection. I stayed in my cell and thought about the brothers who stood up. I am currently amongst a mostly conditioned crowd. But I am resistance to the bond and maintain my beliefs, values and dignity.

T.F., Pelican Bay, CA

[**Editor's Note**: *Copies of the paper mailed to prisoners at Pelican Bay have been returned to us because the prisoners' cell number was not included in the address label. We will be challenging any rejection on such outrageous grounds.*]

The Prison/Com , Alliance (P/CA) is a group of Washington state prisoners and concerned citizens whose goal is to abolish the Washington state Indeterminate Sentence Review Board, AKA the parole board, and bring all indeterminate sentence prisoners under the new SRA guidelines. The courts and the legislature are unwilling to abolish the parole board, so the way the P/CA is focusing on doing this is the ballot initiative, to let the voters of the State of Washington decide whether or not they want the parole board.

P/CA does not need money, they need people willing to get involved and make their voices heard. PLN will cover new developments as they occur. To get involved or for more information please contact: P/CA, P.O.

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Michael Misroc; Jim McMahan; Carey Catherine; Steve Austin; and Cindy Susat, Chris East, mailing helpers. Thanks to the University Friends Center (4001 - 9th Ave. N.E.) in Seattle for the use of their space to do the mailing. We invite anyone interested to join us at the mailing party held on the last Tuesday of each month at 3 p.m. The mailing lasts for about one hour, and generally includes a lively discussion of prison issues. Call Janie at 221-7114 to confirm.

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